

No. 14747

United States
Court of Appeals
for the Ninth Circuit

COMMERCIAL TRAVELERS INSURANCE
COMPANY, a corporation, Appellant,

vs.

NOVA GARETT WALSH, individually and as ad-
ministratrix of the estate of Ralph H. Garrett,
deceased, Appellee.

Transcript of Record

Appeal from the United States District Court for the Eastern
District of Washington, Northern Division

FILED

AUG - 8 1955

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

RAFTIS & RAFTIS,

Dorman Building,
Colville, Washington,

Attorneys for Plaintiff-Appellee.

HAMBLEN, GILBERT & BROOKE,

912 Paulsen Building,
Spokane, Washington,

Attorneys for Defendant-Appellant. [1*]

* Page numbers appearing at foot of page of original Transcript of Record.

In the Superior Court of the State of Washington,
in and for the County of Stevens

NOVA GARETT WALSH, individually and as
administratrix of the estate of Ralph H. Garrett,
deceased, Plaintiff,

vs.

COMMERCIAL TRAVELERS INSURANCE
COMPANY, a corporation, Defendant.

COMPLAINT

Plaintiff complains of defendant and for cause
of action alleges:

I.

That the plaintiff herein was on September 25,
1953, and for some years prior thereto the wife of
Ralph H. Garrett. That the said Ralph H. Garrett
died at Spokane, Washington, on September 25,
1953 and that plaintiff is his widow and is the duly
appointed, qualified and acting administratrix of
the estate of the said Ralph H. Garrett, deceased,
having been appointed such administratrix by the
Superior Court of Stevens County, Washington
under date of October 2, 1953. That plaintiff has
now remarried and is the wife of Jack Walsh and
resides at Colville, Stevens County, Washington.

II.

That the above named defendant, Commercial
Travelers Insurance Company, at all times herein
mentioned, was and now is a corporation organized
and existing under the laws of the State of Utah

and that the said defendant at all times herein mentioned has been engaged in the insurance business in the State of Washington. That under date of April 26, 1948, the above mentioned Ralph H. Garrett, who was then the husband of plaintiff made and entered into a contract of insurance with the defendant, a corporation, herein being policy No. ERD - 35766 dated April 26, 1948, wherein and whereby upon the payment of an annual premium of \$130.50 commencing on May 1, 1949 the said Ralph H. Garrett was insured at all times thereafter while said insurance policy remained in force and effect for the full payment of the sum of \$3750.00 in the event of the loss of life of the said Ralph H. Garrett directly and exclusively of all other causes from bodily injury sustained through external violent and accidental means.

III.

That the said Ralph H. Garrett paid the annual premiums due under the said policy and contract of insurance and that the said policy of insurance containing the provision above referred to was in full force and effect on September 25, 1953.

IV.

That on or about September 24, 1953 the said Ralph H. Garrett, while engaged in his usual occupation as a farmer, was unloading a load of wheat upon his farm. That while so engaged in unloading wheat at the time and place aforesaid the said

Ralph H. Garrett suffered a severe strain caused by heavy lifting and over exertion and as a direct result thereof suffered a coronary occlusion of his heart as a direct result of which accident and occurrence the said Ralph H. Garrett died on the following day. [5]

V.

That the direct and proximate cause of the death of the said Ralph H. Garrett was due to accidental means in that the said Ralph H. Garrett while engaged in unloading heavy sacks of wheat upon his farm on September 24, 1953 suffered a severe strain by reason of heavy lifting which exerted him to such an extent that his heart suffered undue strain which caused a coronary occlusion as a direct result therefrom and that such coronary occlusion was caused by no other means than the sudden strain due to the lifting by the said Ralph H. Garrett of heavy sacks of wheat weighing approximately 140 pounds each, which was the sole and only cause of his suffering said coronary occlusion which resulted directly in his death on the following day, namely September 25, 1953.

VI.

That the injury sustained by the said Ralph H. Garrett while engaged in lifting heavy sacks of wheat at his farm at the time and place above set forth amounted to an accident as contemplated and defined by the express terms of the policy of insurance then in effect with the defendant herein in that the said Ralph H. Garrett died as a direct and casual result of external violent and accidental

means sustained while engaged in his usual occupation and while the said policy and contract of insurance was in full force and effect.

VII.

That the said policy of insurance provides that upon such accidental death the said Ralph H. Garrett or his estate is entitled to receive a cash payment in the sum of \$3750.00 and that the plaintiff herein, as surviving spouse and as administratrix of the estate of said Ralph H. Garrett, deceased, is entitled to receive such payment as agreed upon in said contract and policy of insurance.

VIII.

That upon the death of the said Ralph H. Garrett the plaintiff herein promptly notified the defendant of the fact of such death and forthwith and in accordance with the terms of said policy filed proof of claim for the sum of \$3750.00 due to the plaintiff herein under the said contract and policy of insurance by reason of the accidental death of the said Ralph H. Garrett as above set forth. That the said defendant has wrongfully, unlawfully and in direct violation of the terms of said policy of insurance failed and refused to pay to the plaintiff herein the said sum of \$3750.00 or any part or portion thereof and has absolutely refused to make any payment or settlement whatsoever with the plaintiff and that there is now due and owing to the plaintiff herein by reason of the foregoing the sum of \$3750.00.

Wherefore plaintiff prays that upon a hearing hereof she be awarded judgment against the above named defendant in the sum of \$3750.00 together with interest thereon at the rate of 6% per annum from September 25, 1953 until paid, together with all costs and disbursements by plaintiff herein expended.

RAFTIS & RAFTIS,
Attorneys for Plaintiff

Duly Verified. [6]

[Endorsed]: Filed District Court June 8, 1954.

In the District Court of the United States, Eastern
District of Washington, Northern Division

No. 1185

NOVA GARETT WALSH, individually and as ad-
ministratrix of the estate of Ralph H. Garrett,
Deceased, Plaintiff,

vs.

COMMERCIAL TRAVELERS INSURANCE
COMPANY, a corporation, Defendant.

ANSWER

Comes now the defendant and for answer to plaintiff's complaint admits, denies and alleges as follows:

I.

Admits the allegations of paragraph One of the complaint.

II.

Admits the allegations of paragraph Two of the complaint, except the last two lines thereof, and alleges that the wording of the policy in question was to insure against loss of life of said Ralph H. Garrett "resulting directly and exclusively of all other causes from bodily injury sustained during the life of this policy solely through external, violent and accidental means * * *"

III.

Admits the allegations of paragraph Three of the complaint.

IV.

Admits the allegation in the first sentence of paragraph Four; and denies the allegations of the second sentence of paragraph Four, except defendant admits that said Ralph H. Garrett died on September 25, 1953.

V.

Denies the allegations of paragraph Five of the complaint.

VI.

Denies the allegations of paragraph Six of the complaint. [10]

VII.

Denies the allegations of paragraph Seven, except defendant admits that said policy of insurance names Ralph H. Garrett or his estate as beneficiary.

VIII.

Admits the allegations contained in the first sentence of said paragraph Eight of the complaint, except defendant denies that the proof submitted established any claim under said policy; and denies the allegation contained in the second sentence of said paragraph Eight, except defendant admits that it has refused and does refuse to make any payment to plaintiff under said policy.

Further answering said complaint and as an affirmative defense defendant alleges that the death of Ralph H. Garrett did not result directly and exclusively of all other causes from bodily injury sustained during the life of said policy solely through external, violent and accidental means, but on the contrary was the result of a pre-existing heart condition or disease.

Wherefore having fully answered plaintiff's complaint, defendant prays that same may be dismissed and that defendant may have judgment for its costs and disbursements to be taxed herein.

/s/ HAMBLÉN, GILBERT & BROOKE

/s/ H. M. HAMBLÉN,

Attorneys for Defendant

Acknowledgment of Service attached. [11]

[Endorsed]: Filed September 15, 1954.

[Title of District Court and Cause.]

REPLY

Comes now the above named plaintiff and by way of reply to the answer of the defendant herein admits, denies and alleges as follows:

I.

Replying to paragraph II of said answer, the plaintiff admits the same, except as otherwise alleged in her complaint herein.

By way of reply to the further answer and affirmative defense, the plaintiff denies each and every matter, allegation and thing therein, except as otherwise admitted in the complaint herein.

Wherefore, having fully replied to the answer and affirmative defense of the defendant herein, the plaintiff moves that the same be dismissed and that plaintiff be awarded judgment and relief as prayed for in her complaint.

/s/ RAFTIS & RAFTIS,
Attorneys for Plaintiff

Duly Verified.

Acknowledgment of Service attached. [12]

[Endorsed]: Filed October 6, 1954.

Chambers of Sam M. Driver, U. S. District Judge
Spokane 6, Washington

(Clerk's Copy)

P.O. Box 465, Pasco, Wash.

Dec. 31, 1954

Raftis & Raftis

Dorman Bldg., Colville, Wash.

Hamblen, Gilbert & Brooke

Paulsen Bldg., Spokane 1, Wash.

Re: Walsh vs. Commercial Travelers Inc. Co.
No. 1185.

It is my conclusion in the above case that the insured, Ralph H. Garrett died as the result of an accident brought about by the unusual, unexpected and unforeseen happening related in the testimony of Ralph Garrett, Jr. The Findings of Fact should follow his testimony and as to the cause of death the testimony of Doctor McKinley. The applicable law is set forth in the Washington cases cited in Plaintiff's Memorandum Brief.

If you can agree upon the form of the Findings of Fact, Conclusions of Law and Judgment make the usual endorsements of your approval and mail *the to* the Clerk. Otherwise I suggest that Plaintiff's counsel prepare and serve a proposed set and mail them to me and within ten days thereafter Defendant's counsel serve and mail to me any counter proposals he may care to make. I shall then if possible settle and sign them without personal appearance of counsel. You will of course have ten days under the Civil Rules to submit proposed amendments.

I shall be in Spokane for three or four weeks beginning January 10th.

Yours truly,

U. S. District Judge [181]

[Stamped]: Received Jan. 3, 1955. Clerk U. S. District Court, Spokane, Wash.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause coming on for trial in the above entitled court on the 21st day of October, 1954, Honorable Sam M. Driver, Judge, presiding, the plaintiff appearing in person, and by John T. Raftis, representing the firm of Raftis & Raftis, attorneys, appearing for and on behalf of the plaintiff, and H. M. Hamblen of the firm of Hamblen, Gilbert & Brooke, attorneys, appearing for and on behalf of the defendant, and the plaintiff and defendant having introduced evidence on behalf of plaintiff and defendant herein, and the court having heard and considered the same, and having heard the argument of counsel, and briefs having been submitted herein on behalf of plaintiff and defendant, and the court having read and considered the same, and being fully advised and satisfied in the premises, hereby makes its findings of fact and announces its conclusions of law:

Findings of Fact

I.

That Nova Garrett Walsh, plaintiff herein, was on September 25, 1953, and for some years prior thereto, the wife of Ralph H. Garrett. That the said Ralph H. Garrett died at Spokane, Washington, on September 25, 1953, and that the plaintiff herein is his widow and is the duly appointed, qualified and acting administratrix of the estate of the said Ralph H. Garrett, deceased, having been [182] appointed such administratrix by the Superior Court of Stevens County, Washington, under date of October 2, 1953. That plaintiff has now remarried and is the wife of Jack Walsh and resides at Colville, Stevens County, Washington.

II.

That the above named defendant, Commercial Travelers Insurance Company, at all times herein mentioned, was and now is a corporation organized and existing under the laws of the State of Utah and that the said defendant at all times herein mentioned has been engaged in the insurance business in the State of Washington.

That under date of April 26, 1948, the above mentioned Ralph H. Garrett, who was then the husband of plaintiff, made and entered into a contract of insurance with the defendant herein, being policy No. ERD-35766, dated April 26, 1948, wherein and whereby, upon the payment of an annual premium of \$130.50, commencing on May, 1949, the said Ralph H. Garrett was insured at all times there-

after, while said insurance policy remained in force and effect, for the full payment to his estate of the sum of \$3750.00, in the event of the loss of life of said Ralph H. Garrett, "resulting directly and exclusively of all other causes, from bodily injury sustained solely through external, violent and accidental means."

III.

That the said Ralph H. Garrett paid the annual premiums due under the said policy and contract of insurance, and that the said policy of insurance containing the provision above referred to was in full force and effect on September 24, 1953, and on September 25, 1953.

IV.

That on September 24, 1953, the said Ralph H. Garrett had procured a load of seed fall wheat at Colville, Washington, consisting of about 43 sacks weighing approximately 140 pounds each. That the said seed wheat was loaded on a 2-ton flat bed Chevrolet truck having side grain racks about three feet high from the wood floor on said truck. [183]

V.

That the said Ralph H. Garrett transported said truck loaded with seed wheat above described to his farm home near Colville, Washington, and had backed said truck near the door of a cabin in which grain was stored, the door of said cabin being approximately three or four feet from the end of said truck, and the end of the flat bed of said truck was

overlapping the front porch extending out from said cabin with the loading surface of said truck bed some 18 inches to two feet above the surface of the porch floor. That the said wheat was to be unloaded from the truck into said granary by sliding the same down along and upon a plank 2"x8" and about 9' in length, which plank ran from the flat bed at the end of said truck and across and over the front porch of the cabin to the floor of the building in which the grain was to be loaded.

VI.

That the said wheat sacks were unloaded in the following manner; that the said Ralph H. Garrett took hold of said sacks and slid them one at a time along the floor of said Chevrolet truck to the end of said truck and there placed them upright at the end of said plank above described. Thereafter the said sacks were taken by Ralph Garrett, son of the above named Ralph H. Garrett, who slid said wheat sacks in an upright position along said plank into the granary or building where they were to be stored. That the said Ralph Garrett on September, 1953, was fourteen and one-half ($14\frac{1}{2}$) years of age, weighed about 125 pounds and was about 5' 6" in height.

VII.

That the said Ralph H. Garrett had moved about nine sacks of said wheat along the bottom of said truck and stood them upright at the end of the plank, to be taken to said building by his said son, Ralph Garrett. That Ralph H. Garrett then delivered

another sack of seed wheat weighing about 140 pounds to the end of the truck and stood the same upright and his son, Ralph Garrett, took hold of said sack and had started to slide it down the plank described above, when the said sack of wheat got out of control of the said Ralph Garrett and started to fall [184] over in an opposite direction from said plank. That Ralph H. Garrett, now deceased, was standing a few feet from said sack of wheat last described, and, when he observed that his son was unable to hold said sack of wheat upright on said plank, the said Ralph H. Garrett took one step forward, reached out and quickly or suddenly jerked or grabbed said sack of wheat with one hand, and with the other hand held onto the building into which the wheat was being loaded, and remained in this posture, holding the sack of wheat at about a 45 degree angle, until the said Ralph Garrett went around said truck to the opposite side of said plank and assisted his father, the said Ralph H. Garrett, in straightening up said sack of wheat. That the said Ralph Garrett thereupon proceeded to take said sack of seed wheat into the building. That, if said Ralph H. Garrett has not reached out and held said sack of wheat, it would have merely fallen 18" to 2 feet to the porch floor of said building, from whence it could have been moved into the storage room. That, immediately upon returning to the truck, the said Ralph Garrett observed that his father, the said Ralph H. Garrett, was in a stooped position upon the truck holding his chest, and he observed that his father was in pain. That the said

Ralph H. Garrett was unable to unload any more wheat and went into the dwelling. That thereafter the said Ralph H. Garrett continued to be in pain and distress and was pale and was unable to eat his evening meal.

VIII.

That, approximately 25 minutes after the incident above described had occurred, the said Ralph H. Garrett left with his wife, the plaintiff herein, for Spokane, Washington. That the said Ralph H. Garrett had previously arranged to go to Spokane, Washington, for the purpose of having an x-ray taken to determine a possible stomach condition of which the said Ralph H. Garrett had complained. That on the way to Spokane, Washington, the said Ralph H. Garrett continued to be in distress and pain and, before reaching his destination at Spokane, he became very distressed and ill, and that it was necessary to summon a doctor to attend the said Ralph H. Garrett. [185]

IX.

That Dr. D. Wilson McKinlay of Spokane, Washington, responded to a call for a doctor and made an immediate examination of said Ralph H. Garrett and determined that he was suffering from an acute heart ailment. That the said Ralph H. Garrett was thereafter removed to a hospital in Spokane and died on September 25, 1953.

X.

That an autopsy performed upon the body of the said Ralph H. Garrett disclosed that he had been

suffering from an advanced condition of arteriosclerosis of the coronary arteries, with marked narrowing of the lumens of two of the arteries of his heart, and a complete closure of one of said arteries, with some scar tissue of the muscle area supplied by such artery, indicating an old scar, showing it had closed sometime in the past, preceding the present injury. Said autopsy further disclosed a marked narrowing of the anterior circumflex descending artery, with a fresh thrombus or blood clot plugging such artery, and with the muscle supplied by that particular artery hemorrhagic, and already undergoing necrosis, showing a very recent coronary attack, said autopsy verifying the prior diagnosis made by said attending physician when called to treat the said Ralph H. Garrett.

XI.

That the coronary arteries of the said Ralph H. Garrett had narrowed to about one-third ($\frac{1}{3}$) of their normal size, but that the amount of blood going through such coronary to supply the cardiac muscle would be a limited amount sufficient to do ordinary exertion, and that the said Ralph H. Garrett was able to move said sacks along the bed of said truck while he was doing so at a steady pace, and he suffered no pain therefrom. That, when the said sack of seed wheat had gotten beyond the control of Ralph Garrett, his son, as above described, and the said Ralph H. Garrett quickly or suddenly jerked or grabbed said falling sack, and leaned over from the end of said truck, supporting his own

weight by leaning over from the [186] end of said truck to the building near by, and partially supporting the weight of the sack of wheat with the other hand, such situation constituted additional exertion so as to build up an unusual amount of need for blood in the heart, and, by reason thereof, the heart was unable to sustain such additional exertion, and that the additional exertion, as above described, was the direct and proximate cause of an acute or sudden coronary attack being suffered by the said Ralph H. Garrett, which thereafter resulted in his death from a thrombus or blood clot, which acted as a plug to stop up all blood going through the artery to his heart. That such a closure or stoppage of the artery of said Ralph H. Garrett resulted in sudden pain, evidenced almost immediately thereafter, and that the resulting blood clot was sufficient to stop the flow of blood through said artery to the heart. The court finds that the additional exertion experienced by the said Ralph H. Garrett, as above described, was sufficient to produce the thrombus or blood clot which thereafter produced the death of the said Ralph H. Garrett.

XII.

That upon the death of the said Ralph H. Garrett, the plaintiff herein promptly notified the defendant of the fact of such death, and, forthwith, and in accordance with the terms of the said policy, filed proof of claim for the sum of \$3750.00 due to the plaintiff herein under the said contract and policy of insurance, by reason of the death of the said

Ralph H. Garrett, as above set forth, but defendant failed and refused to pay said plaintiff said sum, or any part or portion thereof.

Conclusions of Law

From the foregoing facts, the court concludes as follows:

I.

That the falling of said sack of wheat from the plank on which it was being unloaded by the said Ralph Garrett, son of Ralph H. Garrett, now deceased, followed by the taking hold of said falling sack of wheat by said Ralph H. Garrett, in the manner above described, was an unusual, unexpected and unforeseen event, and [187] the court finds that the same constituted an accident.

II.

That the acute or sudden coronary attack suffered and sustained by the said Ralph H. Garrett, as hereinabove described, amounted to an accident as contemplated and defined by the express terms of the policy of insurance, which was in full force and effect between the said Ralph H. Garrett and the defendant herein at the time that the said Ralph H. Garrett suffered said accident and thereafter died therefrom, and that the death of the said Ralph H. Garrett resulted directly and exclusively of all other causes, from bodily injury sustained solely through external, violent and accidental means, while he was engaged in his usual occupation, and while the said contract and policy of insurance was in full force and effect, as aforesaid.

III.

That plaintiff as surviving spouse and as administratrix of the estate of said Ralph H. Garrett, deceased, is entitled to receive the full payment of \$3750.00 as provided by the express terms of said contract on policy of insurance which has been received in evidence herein, and that said sum is now due and owing to the plaintiff herein, and said plaintiff is entitled to be awarded judgment against the above named defendant in said principal sum of \$3750.00, together with interest thereon at the rate of 6 per cent from September 25, 1953, until paid, and together with costs and disbursements as provided by law to be taxed by the Clerk of the Court herein.

Dated this 15th day of March, 1955.

/s/ SAM M. DRIVER,
Judge

Presented by:

/s/ John T. Raftis of Raftis & Raftis,
Attorneys for Plaintiff

Approved as to form only:

/s/ H. M. Hamblen of Hamblen, Gilbert &
Brooke, Attorneys for Defendant [188]

[Endorsed]: Filed March 15, 1955.

In the District Court of the United States, Eastern
District of Washington, Northern Division

No. 1185

NOVA GARETT WALSH, individually and as ad-
ministratrix of the estate of Ralph H. Garrett,
deceased, Plaintiff,

vs.

COMMERCIAL TRAVELERS INSURANCE
COMPANY, a corporation, Defendant.

JUDGMENT

The above entitled cause, coming on regularly for trial on the 21st day of October, 1954, Honorable Sam M. Driver, Judge, presiding, plaintiff appearing in person and by John T. Raftis, of Raftis & Raftis, attorneys, and the defendant appearing through H. M. Hamblen, of the firm of Hamblen, Gilbert & Brooke, attorneys, and witnesses having been sworn, and evidence having been adduced by the plaintiff and defendant herein, and the court having heard and considered the same, and having heard the argument of counsel, and written briefs having been submitted on behalf of plaintiff and defendant herein, and the court having read and considered the same, and the court having heretofore made its findings of fact and announced its conclusions of law, and being fully advised and satisfied in the premises:

Now, Therefore, it is hereby Ordered, Adjudged and Decreed as follows:

I.

That the plaintiff, Nova Garrett Walsh, individually and as administratrix of the estate of Ralph H. Garrett, deceased, have and she is hereby awarded judgment against the above named defendant in the principal sum of \$3750.00, together with interest thereon at the rate of 6% per annum from September 25, 1953 until paid. [189]

II.

That the said plaintiff is hereby awarded all costs and disbursements expended herein by the said plaintiff, the same to be taxed by the Clerk of the above entitled Court.

Dated this 15th day of March, 1955.

/s/ SAM M. DRIVER,
Judge

Submitted by:

Raftis & Raftis, signed by John T. Raftis of
Raftis & Raftis, Attorneys for Plaintiff.

Approved as to form:

Hamblen, Gilbert & Brooke, signed by H. M.
Hamblen, Attorneys for Defendant. [190]

[Endorsed]: Filed March 15, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Commercial Travelers Insurance Company, Defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in the above entitled action on March 15, 1955.

Dated at Spokane, Washington, this 5th day of April, 1955.

HAMBLEN, GILBERT & BROOKE
/s/ H. M. HAMBLEN,
Attorneys for Defendant

Acknowledgment of Service attached. [191]
[Endorsed]: Filed April 11, 1955.

[Title of District Court and Cause.]

SUPERSEDEAS AND COST BOND ON
APPEAL

Comes now the undersigned, Commercial Travelers Insurance Company, a corporation, defendant above named, and does hereby acknowledge that it is firmly bound unto the plaintiff, above named, in the sum of \$5,000.00, and does deposit with the Clerk of the above entitled court as surety and security therefor one United States Treasury Bond, No. 301-A, payable to Bearer, in the face amount of \$5,000.00, with coupons No. 25 to No. 53 inclusive attached.

The condition of this bond is that, whereas the defendant has appealed to the Court of Appeals for the Ninth Circuit from the judgment of this court, entered March 15, 1955, if this defendant shall pay the amount of the final judgment herein if its appeal shall be dismissed or the judgment affirmed or modified together with all costs that may be awarded, then this obligation to be void and the security deposited herewith returned to defendant, otherwise to remain in full force and effect and with full authority granted to sell and apply the security deposited herewith to the satisfaction of said judgment and costs.

COMMERCIAL TRAVELERS IN-
SURANCE COMPANY,

/s/ By HAMBLEN, GILBERT &
BROOKE, Its Attorneys,
Defendant-Appellant

Form of bond and sufficiency of Surety approved
April 12, 1955.

/s/ SAM M. DRIVER

Judge

[192]

Received \$5,000.00 United States Treasury Bond
No. 301A, with Coupons Nos. 25-53 attached, April
11, 1955.

STANLEY D. TAYLOR, Clerk

/s/ By EVA M. HARDIN, Deputy [193]

[Endorsed]: Filed April 12, 1955. .

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Stanley D. Taylor, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify that the documents annexed hereto are the originals on file in the above entitled cause:

Petition for Removal and Complaint.

Notice of Removal.

Bond on Removal.

Answer.

Reply.

Court Reporter's Record of Proceedings at Trial.

Exhibits: Plaintiff's 1, Policy ERD 35766; Defendant's 2, Statement of Nova V. Garrett; Plaintiff's 3, Certificate of Death.

Copy of Letter of Judge Driver announcing decision.

Findings of Fact and Conclusions of Law.

Judgment.

Notice of Appeal.

Supersedeas and Cost Bond on Appeal.

Appellant's Designation of Record on Appeal.

Statement of Points on which Appellant intends to rely on Appeal and that the same constitute the record for hearing of the appeal from the judgment of the United States District Court for the Eastern District of Washington, in the United States Court of Appeals for the Ninth Circuit, as called for by Appellant's Designation of Record on Appeal.

In Witness Whereof, I have hereunto set my

Spokane, Wash., Oct. 21, 1954, 10 o'clock a.m.

The Court: All right, proceed, gentlemen, when you are ready.

Mr. Raftis: May it please your Honor, the case of Nova Walsh, suing individually and as administratrix of her husband's estate, against Commercial Travelers Insurance Company, a corporation.

Has your Honor had an opportunity to read the file?

The Court: Yes, I read them yesterday so that I am familiar with the pleadings.

Mr. Raftis: Would it be helpful if I made a brief statement?

The Court: No, you may make a statement, anyway.

Mr. Raftis: I will state briefly what the position of plaintiff is and the evidence to support the position.

We will show that Ralph H. Garrett, who resided near Colville, Washington, was engaged in farming and had taken out through the Commercial Travelers Insurance Company of Salt Lake City, Utah, an accident policy, which we will introduce into evidence, which shows that if death results from bodily injury sustained through external, violent and accidental means, such accident being exclusive [15] of other causes and resulting solely through these means that I have just mentioned, that the company will, in that event, pay an accidental death benefit amounting to \$3,750.

We have alleged that on the 20th day of September, 1953, while Ralph H. Garrett was at his farm

home, was unloading a load of seed wheat, and we will describe how that was being done—it also appears that Ralph H. Garrett had had some illness prior thereto, which will be brought up in connection with the accident itself—while engaged in unloading the wheat, he was assisted by his minor son, Ralph H., Jr., and they had unloaded about nine sacks. The father would slide them along the base of the bed of the truck and the son would then take them and slide the sacks down a board into the granary which was a few feet away from the truck.

About the ninth or tenth sack, the father took the sack over to the end of the truck on the board, and his son, in attempting to get hold of the sack, lost his balance and the father lunged forward and grabbed the sack to prevent its falling to the ground and held it there for an interval until the son could get down out of the granary and go around and assist in taking the sack from his father and getting it to the granary.

We will show that immediately after this unforeseen occurrence, the father suffered a severe pain in his [16] chest, which later developed to be—I believe they call it a coronary occlusion—as a result of which he was unable to proceed with any further work and his wife and his mother were obliged to proceed with the unloading of the wheat, which consisted, I think, of around 40 sacks altogether originally.

The Court: Was there a postmortem examination?

Mr. Raftis: Yes, yes.

The Court: It showed the formation of a thrombus or blood clot in the coronary artery?

Mr. Raftis: Well, we will have the doctor here who performed that.

The Court: There is no dispute as to whether he had a prior heart condition?

Mr. Raftis: He did have.

The Court: He did have.

Mr. Raftis: Although we will show he was not aware of that condition fully.

The Court: Oh.

Mr. Raftis: He thought it was a stomach disorder, either peptic ulcer or possible cancer, and that he was to go into Spokane that day, or early the next morning, to see a Dr. Galloway to have an x-ray of his stomach, and that he did start in that night after this pain developed.

When he got to Spokane, as a result of this [17] injury we have described, he was unable to get any relief, and they called a Dr. McKinlay, who came to the hotel and took him in charge, and he died the following morning and the postmortem showed this occlusion which the doctor will describe.

That, briefly, is our evidence, and our position being, of course, that the occurrence was something unforeseen and unusual and, therefore, would come within the definition of "accident," as opposed to some voluntary act. Your Honor is familiar with that rule.

The Court: Do you wish to reserve your statement?

Mr. Hamblen: No statement at this time, your

Honor. Probably, we will have a statement later.

The Court: It struck me in reading the pleadings that the primary issue here would be a question of law, aside from some differences, perhaps, as to how this happened and as to the prior condition, and I don't know as to that. But the primary issue, I should think, would be whether or not this type of result would be within the coverage of the policy.

Mr. Hamblen: I think that is correct, your Honor.

Mr. Raftis: In other words, whether it is an accident.

The Court: Yes, whether it is an accident within the meaning of the policy. [18]

Mr. Raftis: That's right.

The Court: As that term is defined in the language of the policy.

Mr. Raftis: That's right.

The Court: All right, you may proceed, then.

NOVA GARETT WALSH

called and sworn as a witness on her own behalf, was examined and testified as follows:

Direct Examination

Q. (By Mr. Raftis): Your name is Nova Garrett Walsh?

A. That is right.

Q. And, Mrs. Walsh, who was Ralph H. Garrett?

A. Ralph H. Garrett was my former husband.

Q. And when did he die?

(Testimony of Nova Garrett Walsh.)

A. He died September 25, 1953.

Q. And subsequent to his death, I will ask you whether or not you have remarried and your present name is Walsh? A. That is right.

Q. And, Mrs. Walsh, what was your husband's occupation?

A. He was a farmer, a rancher, at the time he took out this policy and more or less continued ranching until his death.

Q. How old was Ralph H. Garret? A. 42.

The Court: He was 42 at the time of his death?

A. 42 or 43. Let me see.

The Court: Well, that is all right.

A. 42, I believe, is right.

Q. (By Mr. Raftis): How large a man was he with regard to weight?

A. He weighed about 123 pounds.

Q. And I will ask you state whether or not you had any children, you and Ralph H. Garrett?

A. We have one son, Ralph, Jr.

Q. And what is his age? A. He is 15.

Q. What would be his age at the time that your husband died? A. 14.

The Court: As I recall, the appointment of Mrs. Walsh as administratrix and in her representative capacity is admitted in the pleadings?

Mr. Raftis: Yes. I was going to ask her, but counsel has admitted that.

The Court: That is admitted, as I recall.

Mr. Hamblen: Yes, your Honor. We didn't check it, but I am sure she was appointed.

(Testimony of Nova Garrett Walsh.)

The Court: Yes, all right. [20]

The Clerk: I have marked Plaintiff's Exhibit 1 for identification, your Honor, this policy.

Q. (By Mr. Raftis): Mrs. Walsh, I will ask you, for the record, if you were appointed as administratrix of the estate of Ralph H. Garrett, deceased?

A. That is right, I am.

Q. Are you acting in that capacity at this time?

A. Yes.

Q. And were you in that capacity at the time you commenced this action?

A. I am quite sure I was, sure I started it right away.

Q. You were appointed very shortly after your husband died?

A. Yes, in a week, I believe.

Q. Mrs. Walsh, handing you Plaintiff's Exhibit 1 for identification, will you examine the document and state what it is?

A. This is a policy my husband took out. I took one just like it. I was insured until after his death and I dropped mine, also.

Mr. Hamblen: Object to the voluntary statement and ask it be stricken from the record as immaterial.

The Court: Yes, it is not material here.

Mr. Raftis: Yes, that may be stricken. In other words, just respond to the question.

A. That is it. [21]

Q. This is the policy that Ralph H. Garrett had with the Commercial Travelers Insurance Company?

A. That is right.

(Testimony of Nova Garrett Walsh.)

Q. And was that policy in effect on September 25, 1953, at the time your husband died?

A. It was, we have always kept it up.

Mr. Hamblen: No objection.

The Court: It will be admitted, then. There isn't any question, as I understand it, about the policy itself being in effect?

Mr. Raftis: That's right.

(Whereupon, the said policy of insurance was admitted in evidence as Plaintiff's Exhibit No. 1.)

PLAINTIFF'S EXHIBIT No. 1

This Policy Provides Benefits for Loss of Life, Limb, Sight or Time by Accidental Means, and for Loss of Time by Sickness or Disease, as Herein Provided

Expansion Refund Disability Policy
Commercial Travelers Insurance Company
Salt Lake City, Utah

\$150.00 Monthly Disability Benefits; \$3,750 Accidental Death Benefit; \$7,500 Travel Death Benefit.

Does Hereby Insure Ralph H. Garrett of Colville, Washington, herein referred to as the Insured, a Farmer by occupation, subject to all the conditions and limitations hereinafter contained and endorsed hereon or attached hereto.

Against: (1) The effect resulting directly and exclusively of all other causes, from bodily injury sus-

tained during the life of this policy solely through external, violent and accidental means (suicide, sane or insane, not included), said bodily injury so sustained being hereinafter referred to as "such injury" and

(2) Disability resulting from sickness or disease which is contracted and begins during the life of this policy and after it had been maintained in force for thirty days from its date, hereinafter referred to as "such sickness."

Schedule of Benefits

Part A

1. Monthly Accident Benefit One Hundred Fifty Dollars.

2. Monthly Sickness Benefit One Hundred Fifty Dollars.

3. Monthly Hospital Benefit Two Hundred Twenty Five Dollars.

4. Monthly Nurse Benefit Two Hundred Twenty Five Dollars.

5. Principal Sum Thirty Seven Hundred Fifty Dollars.

6. Accidental Death Benefit Thirty Seven Hundred Fifty Dollars.

7. Travel Accident Death Benefit Seventy Five Hundred Dollars.

Part B

1. Special Ten Year Cash Bonus

For any term of ten (10) consecutive years that this policy is maintained in continuous force and no claim has been paid or loss incurred, the Com-

pany will pay to the Insured a Cash Bonus of Six Hundred Dollars.

This policy is issued in consideration of the statements in the application of this policy, a copy of which is made a part of this contract, and the payment of the first Annual premium of One Hundred Thirty and 50/100 Dollars, from 12:00 o'clock noon standard time at the place where the insured resides on the day this contract is countersigned, until 12:00 o'clock noon, such standard time of the first day of May, 1949.

2. Annual Profit-Sharing Dividend

Premiums after the first year shall be reduced by dividends based upon the earnings and savings of the company, but in no event shall the dividends be less than \$30.00.

Since a minimum dividend is guaranteed under this policy, renewal premium deposits after the first year shall never be more than those listed on the front panel.

In Witness Whereof: The Commercial Travelers Insurance Company, has caused this policy to be signed by its President, its Secretary and Countersigned by a person duly authorized for the purpose.

/s/ A. W. CONOVER,
President

/s/ R. S. SATTERFIELD,
Secretary

Countersigned at Salt Lake City, Utah, the 26th day of April, 1948.

Non-Assessable

This policy is guaranteed renewable during any period the insured is qualifying for the special ten year cash bonus. Renewal of the policy after lapse or payment of a claim shall be at the option of the Company.

Form ERD

* * * * *

Q. Mrs. Walsh, I will inquire briefly as to the history of the physical health of Ralph H. Garrett prior to his death September 25, 1953. I will ask you when, if at all, did you learn and know prior to his death that he had indications of a heart condition? A. Prior to his death?

Q. Prior to his death, yes?

A. Prior to his death, we went in about, I think, somewhere around September 5th—— [22]

Q. What year?

A. Of '53, the year he died.

Q. Pardon me.

A. All I can tell you, they run a cardiogram of him and showed some markings in it and showed it to me, but it did not mean anything to me, I didn't know anything about cardiograms.

Q. In other words, prior to that time, had there been any suggestion at all——

A. Never, never before.

Q. And that was in 1953 you are referring to?

A. Right.

Q. Which would be two or three weeks prior to his death somewhere, three weeks?

(Testimony of Nova Garrett Walsh.)

A. Died the 25th, it would be about three weeks.

Q. About three weeks, yes. And prior to that time, what had been his general complaint or ailment for which he had been treated?

A. Stomach trouble, and he had had a couple of operations before that.

Q. When were these operations?

A. I think about the 9th month—let's see—about the second month, the 9th day of '48—he had a double hernia operation, which we thought had caused his sickness, and he had had that repaired and he was fine for [23] a year or so. And then he had his appendix removed in about December of '48 and he seemed to be better then for awhile. And then after we went out to this other ranch, we bought this ranch, he developed an allergy, and he had an allergy from about March, when he was working in the wheat, seeding, until his death, and the doctor said it was allergy, they call it wheat allergy. And that is what we were treating him for all the summer months, and he was supposed to keep out of the dust and out of the dirt because of this allergy. Therefore, we had my uncle there and my uncle did most of the work because of the wheat allergy.

Q. And as I understand it, you didn't know all of this time there was any suggestion or indication of a heart situation?

A. Nothing other than the doctor told him he must have rest. I believe he told him he might have a little heart condition, but he must have rest. I

(Testimony of Nova Garrett Walsh.)

don't know, I wasn't with him. See, I didn't go with him the last time.

Q. I am asking as to your knowledge?

A. To my knowledge, I knew nothing of it.

Q. I see. Relating to the stomach condition that you described, will you tell anything further, if there is anything further, as to the symptoms of the stomach [24] disorder?

A. His stomach bothered him terrible and he would get up in the night and vomit sometimes, and he couldn't keep his food down at all and he kept thinking he had stomach trouble and he would go in to the doctor, and the doctor thought he had stomach trouble, too. In fact, I saw a record just the day before I come down where they were treating him for peptic ulcer.

Q. My inquiry, of course, is that prior to this date in September, the date the cardiograph was taken, his complaint, as you have now stated, was mostly in regard to his stomach?

A. In regard to his stomach.

Q. Now, after the cardiograph was taken in September, 1953, did you ever go back into Dr. Lowell's office further in regard to your husband's condition?

A. I never entered Dr. Lowell's office after September 5th, or whenever that date was that he run the cardiogram, until after his death. After his death, I went in and I—

Q. I will ask you that further. A. Okay.

Q. But, in other words, you did not go back in?

A. I did not.

(Testimony of Nova Garrett Walsh.)

Q. I will ask you if you and your husband came to Colville [25] on or about September 24, 1953?

A. We did.

Q. That, of course, being the date prior to his death that you have just testified to?

A. That is right.

Q. What was your husband's general health at that time?

A. Other than allergy, he seemed to be feeling fine. He was covered with an allergy. And we come to town and I was in your office that day. I had a bill to pay through you, I paid, as I recall, and I didn't go to the doctor with him that day.

Q. What did he do that day when he was in town?

A. He stopped in at Newland's and played cards and he played cards all day. Then I usually went in and picked him up about lunch time, and we stayed at Newland's and ate our lunch, and then after that, why, he played cards some more, and then in the evening about the time for the elevator to close, he went down and they loaded up this wheat for him and we went home, planning to come to Spokane——

Q. Where did he get this load of wheat?

A. At Pat Brushenham's elevator, the only elevator we have.

Q. That is the flour mill and wheat elevator?

A. Flour mill, Colville Flour Mill.

Q. Is that at Colville, Washington? [26]

A. That's right.

(Testimony of Nova Garrett Walsh.)

Q. And I believe you said that the employees at the mill loaded the wheat for him?

A. That is right.

Q. What was this wheat for, just by way of inquiry?

A. It was a treated wheat to seed on this 89-acre farm we have. We have an 89 acre wheat allotment. That was enough wheat to cover that.

Q. Yes. Had you bought any other wheat previously during that fall?

A. No, we had sold wheat. We just marketed our wheat and brought back a load.

Q. Had your husband loaded and unloaded wheat prior to that time?

A. He did not, he didn't have to load it or unload it. We hired a combine to combine it and it went right into the truck and was taken right to the elevator and dumped in the elevator, as you know.

Q. So this, then, I take it, was the only load of wheat that he came in contact with as far as loading or unloading?

A. That's right.

Q. During the year 1953? A. That is right.

Q. Now, when he drove the wheat out to the farm, I take [27] it—did he drive the truck home?

A. He drove the truck home. He felt fine, sure.

Q. And about what time of the evening did you arrive home from Colville?

A. Well, I imagine it was about 5:30, 6 o'clock. We only live 10 miles out.

Q. While he was in Colville on September 24, 1953, to your knowledge, do you know whether

(Testimony of Nova Garrett Walsh.)

arrangements were made that he should go into Spokane?

A. He told me, he said, and he had a piece of paper with the doctor's address on in Spokane, Dr. Galloway he was supposed to see, he said, "Dr. Lowell is sending me to this stomach specialist, Dr. Galloway, and," he said, "I am to have x-rays." And——

Q. Well, now, that is enough. A. Sorry.

Q. For that answer. And had you then, you and he, made plans to go into Spokane in response to that request from the doctor? A. Yes.

Q. When did you expect to go in?

A. Well, that evening as we were going home, I said to him, I said, "Let's just go in tonight." He said, "Oh, well, we better wait until morning." I said, "Why not go tonight? Then you will have a good night's rest before [28] the case, you won't have that drive ahead of you." And he said, "Okay."

Q. Very well. Then when you got home with the load of wheat, did you have any other means of going to Spokane except with your truck?

A. No, we didn't, that is the only automobile we owned.

Q. So was it necessary that the wheat be unloaded that evening? A. Yes, it had to be.

Q. Now, who proceeded to unload the wheat, to your knowledge?

A. Ralph began to unload it until—Ralph unloaded until he took sick and then we had to finish.

Q. Who helped?

(Testimony of Nova Garrett Walsh.)

A. Junior helped take it off the truck.

Q. That is your son that you are describing?

A. That's right, Ralph, Jr.

Q. Whom you mentioned awhile ago? A. Yes.

Q. Do you know how they had the truck arranged and how they proceeded to unload this load of wheat? A. Yes, I do.

Q. Just describe that briefly to the Court.

A. I may have to stand to do so.

Q. Well, if you want to illustrate to the Court, you may [29] stand.

A. Okay. We had built a bunch of cabins for some airmen and the airmen had moved out and we thought we would use this granary—or these cabins then for granaries, and they had three little steps up in them to enter it and there was a door, and a truck, as you know, is quite high, I can't jump into them, I imagine they hit me about here (indicating), and he had a plank about so, I would say about a 2 x 8, he had it from the top here down into this door. Then he would slide the grain over and set it on the plank and put it down for the youngster or the youngster would come and help him. I wasn't out there when the youngster unloaded, I don't know how they managed it, but I think that is the way it was done and that is the way I proceeded to do after he took sick.

Q. All right. Where were you at the time he started to unload the load of wheat?

A. Mother and I were in the house trying to prepare some dinner. We was going to prepare a

(Testimony of Nova Garrett Walsh.)

lunch right quick to have lunch before we went to Spokane.

Q. You say Mother and you; was that your mother?

A. That is the husband's mother, Mrs.—

Q. That is Ralph H. Garrett's mother?

A. That is Ralph H. Garret's mother. [30]

Q. What is her name? A. Mrs. George Noah.

Q. After he started unloading the wheat, what was the first thing that come to your attention after he commenced unloading this load of wheat?

A. Well, I just thought I would take a look out—I don't know what made me do it—just looked out the window and I saw him unloading the wheat and saw him doubled up with pain, just doubled up in a pained position.

Q. Describe it to the Court what you saw. How did he indicate his distress?

A. I just saw him stand up in a stooped position like this (indicating) and more or less leaning against the truck.

Q. And was that after he had started unloading the wheat?

A. That was the first time I saw him. I didn't see him up until then.

Q. What did you do then after you saw that?

A. I said to Mom, I said, "My goodness, Mom——"

Q. Regardless of what you said, just what did you do?

A. I went right out and helped him unload it.

(Testimony of Nova Garrett Walsh.)

Q. Did his mother go out with you?

A. And his mother come out and it took two of us to help unload it.

Q. Was he able to unload any more wheat?

A. He didn't unload any more, he couldn't. [31]

Q. And do you know how many sacks of wheat there were on the load? A. There were 43.

Q. 43 sacks. And do you know how much these sacks weighed?

A. They weighed 140 pounds apiece.

The Court: Sewed sacks, weren't they?

A. Sewed sacks.

The Court: What kind of wheat was it, do you know?

A. There was two kinds; one was Almira and the other was—I never did learn what the one was.

The Court: Was it hard or soft wheat?

A. Soft wheat.

Q. (By Mr. Raftis): So then you and his mother yourselves unloaded the balance with his son, I take it? A. That is right.

Q. And did you have occasion then to observe how the wheat was being unloaded?

A. I know how Mother and I did it. We drug it over, she took an ear and I took an ear, and we slid it over and down the plank.

Q. And was that plank, you said, about 8 inches wide, to the best of your knowledge?

A. It was about a 2 x 8.

Q. After you went out and you saw your husband doubled up, what was his condition with ref-

(Testimony of Nova Garrett Walsh.)

erence to color, or, in [32] other words, describe to the Court any symptoms you may have observed?

A. Well, he looked kind of peaked. I don't know, he had had this allergy so bad that he had looked bad from the allergy, anyway, wheat allergy, and I don't know if I noticed how his color looked or anything. I just knew he was sick and I knew that I finished the load.

Q. State whether or not he ate his meal after that?

A. He did not. I said to him, I said, "Well, go on in the house and Mom and I will finish this." And he went in the house and sit down and Mom and I come in, then she finished—she helped me, we finished our supper, and he refused to eat. So when he didn't eat, I said, "Well, I won't eat, either." I said, "Maybe we will stop on the way and get a cup of coffee or something." I thought if he felt more like eating, then we would have a cup of coffee on the way, but he never did feel like eating.

Q. How long was it before you started to Spokane to see the doctor?

A. Oh, I imagine immediately. We started right away, I think, probably half an hour after we got the load unloaded.

Q. Did he drive the car starting—

A. I drove part of the way. [33]

Q. And state whether or not, Mrs. Walsh, your husband continued to show symptoms of distress?

A. He was sick all the way. I drove and when we got into Spokane, he said, "Mom, I am so sick."

(Testimony of Nova Garrett Walsh.)

And I said, "Well, gee, I hope you are able to drive when we get to Spokane because I'm afraid to drive in the city." He said, "Oh, I don't think it will be too bad."

Well, we got out to the edge of town, I don't know about how far, but, anyway, he took over and he drove a little ways and he said, "I just can't drive any more," and he pulled over on the side of the road. And he said, "Do you mind if I lay my head in your lap?" I said, "No, go ahead, if it helps you any." He was laying his head on me rolling with pain. He was practically all over the front seat. I said, "I'll go over to the station and get you a bottle of soda pop, that might relieve you." He seemed to have gas and he was belching terrible. And so I goes over to this station and I got him a bottle of strawberry soda pop, and I said to this man at the station, I said, "How far is it into Spokane or the Pedicord Hotel?" where we had planned to stay all night. He said, "It is exactly six miles from this station to the city." And I said, "My gosh, I didn't think it was that far."

Q. In other words, it was then about six miles out of town? [34]

A. Six miles. Well, I had to finish driving then that six miles to the Pedicord, and when I got to the Pedicord, I was another about 45 minutes before I could get him able to get out of the car and into the hotel.

Q. Did you call the doctor at that time?

A. When I got in the hotel, I asked——

(Testimony of Nova Garrett Walsh.)

Q. Just, in other words, you shouldn't repeat what others told you, Mrs. Walsh, just say what you did. A. I see. Yes, I called the doctor.

Q. And who did you call?

A. We called Dr. McKinlay. He was the only doctor on night duty.

Q. A doctor here in town?

The Court: McKinlay?

A. Dr. McKinlay.

Mr. Raftis: McKinlay, your Honor.

The Court: All right.

Q. (By Mr. Raftis): And what did Dr. McKinlay do with reference to treating your husband further?

A. He just sort of examined his stomach and told him he could do better examining him and everything if he could take him to the hospital. And we told him we were down there for stomach x-rays, and he said, "Well, you are too sick a man for x-rays now." He said, "The only thing we can do is take you to the hospital." [35]

Q. Did he take him to a hospital?

A. He took us to the hospital. We got in his car and went to the St. Lukes Hospital.

Q. And——

A. That was about midnight, I guess, or 11 o'clock, something like that.

Q. Did your husband continue to have this distress and pain continually?

A. It continued until he passed away the next morning, I think about 11 o'clock.

(Testimony of Nova Garrett Walsh.)

The Court: What time did you say he passed away the next morning, approximately?

A. It seems like it was about a quarter to 11 or a quarter after, I'm not too sure.

The Court: Well, just the approximate time.

A. Uh-huh, it was around 11.

Mr. Raftis: I believe that is all. You may examine.

Cross Examination

Q. (By Mr. Hamblen): Mrs. Walsh——

A. Yes, sir?

Q. How long had you and Mr. Garrett been in the farming business? [36]

A. Practically all our life, except from the time we sold in the Basin and bought an apartment place, and we stayed there about a year, I guess, or such a matter, and my husband said he wanted to go back to the farm, so we traded that business for this farm.

Q. So all of your married life——

A. Practically, except he worked on the civil defense, you know, on the war, but he was a——

Q. Did wheat farming off and on during that time?

A. During the time of what, his defense work?

Q. During the period of your marriage with him?

A. We were farming practically all of our married life.

Q. That included wheat farming mainly, did it not?

(Testimony of Nova Garrett Walsh.)

A. Well, wheat and—in Nebraska, we raised lots of corn. We farmed in Nebraska several years.

Q. When were you married to Mr. Garrett?

A. I was married to Mr. Garrett on March the 1st, 1930.

Q. 1930. So that over a period of——

A. 20 some years.

Q. ——20 odd years, he engaged in farming, a large part of which was wheat farming, here and other places? A. Yes.

Q. And this farm up near Colville was acquired by you and Mr. Garrett when?

A. January—oh, well, we acquired it in December. We [37] moved out there, I think, in January of 1953. We hadn't been there but about nine months, eight or nine months, when he died.

The Court: Where was that place?

A. It is out of Arden just three miles; 10 miles from Colville.

Q. (By Mr. Hamblen): Now, as I understand it, Mr. Garrett had been to Dr. Lowell in Colville for treatment for various things prior to the summer of '53?

A. I think he doctored with Dr. Lowell since 1948 sometime.

Q. Since 1948?

A. Since Dr. Lowell's coming there. We was probably one of his first customers.

Q. And along toward the end of August of 1953, he went to Dr. Lowell again on account of pains in his stomach or chest, isn't that right?

(Testimony of Nova Garrett Walsh.)

A. Right.

The Court: I didn't get that doctor's name.

Mr. Raftis: Lowell.

The Court: Lowell?

Mr. Raftis: Yes.

Q. (By Mr. Hamblen): Dr. Roy S. Lowell, I believe, was it not? A. That's right.

Q. And again early in September, 1953, he went back to see [38] Dr. Lowell?

A. I don't think—I don't know if he went in August. He went, I think, the first part of September.

Q. Around September 5th, would that be?

A. Well, I should have checked that date when I was up there, but I didn't. I imagine it is about right.

Q. About that date, uh-huh. And Mr. Garrett, after that visit to Dr. Lowell, came back home and advised you that Dr. Lowell had diagnosed a heart condition?

A. He said, "I had a slight heart condition, I must slow down."

Q. And Mr. Garrett told you that the doctor advised him to quit all farm work?

A. I don't recall that. I was with Ralph when he went to Dr. Lowell on September 5th, he didn't have to tell me anything, I was with him that day.

Q. Oh, you were with him?

A. On this September 5th when he run the cardiogram, I was with him. I know exactly what he told him that day.

(Testimony of Nova Garrett Walsh.)

Q. You think it was the first visit in September when you say you were with him?

A. When he run the cardiogram on him, I was with him, but I wasn't with him on the last visit.

Q. The last visit was on September 24th?

A. That's right. [39]

Q. Well, in any event then, if you were with him, you, yourself, heard Dr. Lowell admonish him not to engage——

A. He told him he better take it easy and he said, "Go to bed for a couple of weeks." That is what he told him and he did, he went to bed a couple of weeks.

Q. Well, didn't he advise him to quit all farm work and sell the farm?

A. He told him to sell the farm, but it takes time to sell a farm.

Q. Well, didn't he advise him to quit any farm work, particularly anything that required strenuous exercise or heavy exercise?

A. You know, for the last—since '48 he had told him not to lift or exert, and that was after he repaired him for a double hernia and we figured it was because of the hernia. Nothing was ever mentioned of heart trouble.

Q. Well, again on September 5th, or whatever the date was early in September, he did repeat that advice to him, didn't he?

A. As I stated to you, he told him to go to bed for two weeks, take a rest, and he did such.

(Testimony of Nova Garrett Walsh.)

Q. Didn't say anything to him about not doing heavy work from this time on?

A. Ralph had been advised not to do heavy work for a long time. [40]

Q. For a long time?

A. To use machinery to lift it.

Q. Since 1948, he had been advised not to do heavy lifting?

A. Right, because of his hernia. He said, "Man you are so full of stitches, I don't want to ever see you back here again for a hernia operation." He didn't want him to rupture again. That is exactly what he told him. He repaired one side and Dr. Canning the other.

Q. Well, in any event, following this visit to Dr. Lowell early in September, you knew that Mr. Garrett had a heart condition?

A. I thought I knew a lot of things, but I'm no physician.

Q. Well, I understand that, Mrs. Walsh, but you knew from what Dr. Lowell told you?

A. Dr. Lowell told him a heart condition, yes, and he showed me a cardiogram with some little marks in, but it didn't mean too much to me, I don't don't know much about cardiograms.

Q. Now, on September 24th, you and Mr. Garrett, with your Chevrolet flat-bed truck, went to the elevator and picked up some 20 or 25 sacks of seed wheat?

A. It happened to be 43.

Q. 43? A. 43. [41]

Q. Oh. And the wheat was loaded at the ele-

(Testimony of Nova Garrett Walsh.)

vator around 5 or 6 in the evening of the 24th of September?

A. That's right, we always made the elevator just before closing time. When we went to town, we didn't hurry back.

Q. And from there, you drove on back to your farm? A. That's right.

The Court: That was the elevator in Colville, I assume, wasn't it?

A. Uh-huh, that's right.

The Court: All right, go ahead.

Q. (By Mr. Hamblen): And on arrival at the farm, you went into the house to get dinner and Mr. Garrett called the boy out of the house to help him unload the wheat; is that right?

A. That's right.

Q. How far is your house from this place where the wheat was being unloaded?

A. As I stated, this wheat, where we unloaded, was in some apartments we had built for three air-men's families to live in and it was just right across from my back door, I would say about 30, 35 feet.

Q. You could look right out of the kitchen door and the kitchen window?

A. Looked out of my dining room door right across and look [42] at it. We built them close to our house so they could have access to our bathroom and such.

Q. And did you see Mr. Garrett back the truck up to this porch or platform of the little cabin or whatever it was?

(Testimony of Nova Garrett Walsh.)

A. I did, I was with him when he backed it up. When we came home, we backed it up to the place and I got out and went into the house.

Q. Was that a wooden porch on that cabin?

A. It was a wooden porch, yes.

Q. Did he back the flat bed right up over the porch?

A. No, he couldn't, right up over it, because there was three little steps out there, three little, tiny steps. I would say they was just about that wide a porch (indicating). The kids built them. They didn't plan to stay long, we just built a short porch. There was three little steps just so high up to their door, and he backed this up there and they slid them in.

Q. And did you see them put the plank up in the end of the flat bed to the porch?

A. No, I didn't.

Q. You went on into the kitchen?

A. I went on into the kitchen.

Q. You didn't watch what he was doing then until you happened to look out later on? [43]

A. That's right.

Q. And you saw him at that time standing on the flat bed and bending over?

A. And doubled up with pain.

Q. Or was he sitting down?

A. Well, he was more or less—he was in a stooped position and I believe more or less leaning against the bed. You could call it sitting or standing, either one.

(Testimony of Nova Garrett Walsh.)

Q. But he was up on the floor of the bed?

A. He was still on the flat bed, yes.

Q. And that is all you saw of him in the unloading process up to that time?

A. That is all I saw of him when unloading the wheat.

Q. You didn't see him moving the sacks?

A. I did not.

Q. You didn't see the son moving the sacks?

A. I did not.

Q. When you saw him in that position when you immediately went out to see what the trouble was—

A. That is right.

Q. And you asked him what the trouble was, didn't you?

A. I did.

Q. And he told you that he thought maybe he had strained himself, didn't he?

A. He said, "I just can't do any more," that's what he said. [44] He had hurt himself. I said, "Well, you go on in and Mom and I—" I always called her "Mom"—I said, "Mom and I will unload."

Q. He said, "It's just too heavy for me?"

A. That's right, he said, "It's just too heavy, I can't do it."

Q. He didn't say he had slipped or stumbled or fallen or anything of that kind?

A. He did not tell me.

Q. And you asked him?

A. I recall later—I mean, I couldn't recall it until later—that when we were unloading another sack, Mom and I had one slip and we had quite a

(Testimony of Nova Garrett Walsh.)

time juggling it back, and he said, "I had one do that with me and I had a heck of a time getting it back," but that is all I remember him saying. I do remember now that he said that.

Q. But, in any event, you did ask him what happened and all he said was it was too heavy for him, he couldn't do it?

A. "Just can't do it any more."

Q. Did he stay there on the truck then, sit there, while you finished unloading?

A. No, he stayed a little bit, I imagine we unloaded three or four sacks before he got down. I said, "Why don't you get down and go in the house?" I said, "Mother and [45] I can finish this." She came out right away. And that is what he did. When we went in, he was sitting in a chair.

Q. You then later in the evening, as soon as you could get away, drove on into Spokane, as you have testified?

A. That's right.

Q. And where was it that he tried to do the driving? About six miles out of the city?

A. No, a little more than six miles, because I imagine he drove a couple of miles, a couple or three miles. We pulled over and he took the wheel. And he said, "I just can't drive in," and I said, "Well, pull over to the side and maybe you will feel a little better in just a little bit." Well, he pulled over to the side and he just never did get better. As I said, I went to the station, I got a bottle of soda pop and gave him.

(Testimony of Nova Garrett Walsh.)

Q. Did the driving that he tried to do seem to make him worse?

A. Well, he was in so much pain, he couldn't drive, that is the fact. He just couldn't.

Q. It was just too much of a strain on him to drive?

A. He was doubled up in pain, he couldn't drive.

Q. Well, he did drive, you said, for two miles?

A. He drove for two miles, yes, or approximately, maybe three. [46]

Q. Then he said, "I can't do it?"

A. He said, "I can't do it."

Q. And he just was doubled up on the seat and you took over again? A. That's right.

The Clerk: Defendant's 2 for identification.

Q. (By Mr. Hamblen): Mrs. Walsh, showing you what has been marked for identification as Defendant's No. 2, is that your signature?

A. Definitely.

Q. You recognize it as such?

A. Sure, I do.

Q. And would you look at that exhibit and see if that is a statement which you made and signed on the date of October 14, '53?

A. Right.

Q. Is that a statement you made at that time?

A. This man and I sit down and had a talk, as the insurance men do, and that is exactly, that is the same as I have just told you.

Q. That is exactly what you told him and——

A. Well, as near as I can gather.

(Testimony of Nova Garrett Walsh.)

Q. And you made the statement——

A. They come out so soon, you hardly have time to adjust yourself, you don't know what you are telling for sure. [47]

Q. Well, there isn't anything incorrect in this statement, is there?

A. I don't notice anything. As I read it over, I didn't see anything in there.

Mr. Hamblen: Offer 2 in evidence.

Mr. Raftis: I understand she gave this to an insurance adjustor?

Mr. Hamblen: That is what she said, yes.

A. Uh-huh.

Mr. Raftis: No objection.

The Court: It will be admitted. You have offered it, haven't you?

Mr. Hamblen: I have offered 2 in evidence.

The Court: It will be admitted.

(Whereupon, the said statement was admitted in evidence as Defendant's Exhibit No. 2.)

DEFENDANT'S EXHIBIT No. 2

Oct. 14, 1953

Statement by Mrs. Ralph H. Garrett, Rt. 3, Colville, Wn., regarding health history of Ralph H. Garrett, deceased 9-25-53.

My late husband, had been bothered with upper abdominal pain, which felt like stomach trouble, for over three years. He had been under Dr. Lowell, & this doctor had advised him to quit farm-

(Testimony of Nova Garrett Walsh.)

ing in 1951. He sold out & bought a motel & this February, 1953, & he started feeling better. We purchased this farm in February & he had performed the work up till 9-24-53. About mid August he started having chest pains & the first part September he went to Dr. Lowell. Dr. Lowell told him at that time that he had a heart condition & should quit work & rest. He continued light chores & continued to have chest pains. On 9-24-53 he had done some heavy lifting & had severe chest pains. We went immediately to Spokane & on the way he had two more attacks & was hospitalized the same night. I have read this statement fully, understand it, & it is true.

/s/ NOVA V. GARRETT

Witness: Signed G. W. Clayton.

Q. (By Mr. Hamblen): Well, Mrs. Walsh, you recall my taking your deposition prior to the trial of this case sometime back? A. Right.

Q. And you gave your sworn testimony about this occurrence at that time? A. Right. [48]

Mr. Hamblen: May I have the deposition of Mrs. Walsh published?

The Court: Yes, it may be opened.

Mr. Hamblen: Want to look over my shoulder?

Mr. Raftis: No, but there were a couple of corrections that had to be made.

The Court: You haven't a copy of it?

Mr. Hamblen: I have a copy of it.

(Testimony of Nova Garrett Walsh.)

Mr. Raftis: The reporter didn't have time to make some corrections in it, he said, this morning.

Mr. Hamblen: If your Honor please, there were two or three little typographical corrections that Mr. Stewart wanted made, and they don't affect any of the part that I am going to ask the witness about.

Mr. Raftis: No objection to the deposition, except there were just some minor matters of names and I think——

Mr. Hamblen: The boy's name was entered as George, instead of Ralph, Jr. That is one mistake.

Mr. Raftis: Another referred to the weight of the wheat sacks, I think. The reporter had put it down 155 and the testimony was 135. I think the other one was he used the word "we," instead of "he."

Mr. Hamblen: Yes, we can agree on those corrections.

Mr. Raftis: They are not very important, except they ought to be called to the Court's attention. [49]

The Court: Well, the Court has personal, if not judicial, knowledge that 155 would be very heavy for wheat, because that would be a big sack of Turkey Red or something to weigh that much.

All right, go ahead.

Q. (By Mr. Hamblen): Mrs. Walsh, do you recall my asking you these questions and your giving these answers:

"Q. When you went out after you looked out the window and saw something was wrong, did you talk to him and ask him what was the matter?"

(Testimony of Nova Garrett Walsh.)

Your answer is:

“A. I did, and he said, ‘I’ve got a pain in my chest.’ That is what he said, a severe pain in his chest. ‘Right here,’ he said, ‘right there.’”

“Q. Did he say, ‘I strained myself,’ or anything like that, ‘I can’t go on unloading?’”

“A. He said, ‘I can’t unload it, it is too heavy.’ I said, ‘Well, why didn’t you call me in the first place?’ And he said, ‘Well, Mom, it just kills me to have to call you to do lifting.’”

“Q. He wasn’t doing anything more than he [50] should have, was he?”

“A. Just lifting more than he could lift, I guess.”

“Q. I mean, it was a common practice, wasn’t it, to unload wheat that way?”

“A. Men unload wheat that way, I suppose.”

“Q. Well, he had done it before, hadn’t he?”

“A. Well, he hadn’t had any to unload, of course. You see, we combined and put it in the truck and then the elevator dumped it, and then when the elevator lifted it, he had to unload it.”

“Q. Did he know how to handle wheat sacks? He wasn’t clumsy, was he, or awkward?”

“A. No.”

“Q. He didn’t tell you he had slipped or fallen, anything of that kind, did he?”

“A. No, he didn’t tell me anything like that.”

“Q. And as far as you know——”

“A. It was just a strain from lifting, I am sure.”

“Q. Just a strain lifting?”

(Testimony of Nova Garrett Walsh.)

“A. Just a strain from lifting.” [51]

“Q. There wasn’t anything said by him about anything else, that he had stumbled or anything of that kind?”

And Mr. Raftis interposed: “For the record, I will object to that, that is immaterial.”

Do you—

The Court: It will be overruled.

Mr. Hamblen: (Continuing reading:)

“A. I don’t recall it.”

“Q. (By Mr. Hamblen): At least, he never mentioned any such thing to you, did he?”

“A. No.”

“Q. And as far as you know, he was just lifting these sacks in the regular way and sliding them down the plank, just as any farmer would do?”

“A. Just lifting them up and sliding them down, that is right.”

Do you recall those questions and answers?

A. Sure, I do.

Q. And those are correct, are they?

A. I see nothing wrong with them, other than I don’t believe he was lifting them too much. I don’t know how he did it. I know he had to slide them down the plank to get them into the room. He had to take them from the [52] front end of the truck to the back somehow, however he did it.

Q. Well, do you say today now that he told you that there was something else in connection with this than the regular procedure? You mentioned in

(Testimony of Nova Garrett Walsh.)

your testimony that one of the sacks was supposed to have slipped.

A. That is what we say today, yes.

Q. That is what you say today?

A. That that testimony came from my son, who actually helped him unload it.

Q. Well, then, he didn't tell you anything about that himself? When I say "he," I mean Mr. Garrett.

A. He did tell me about it. I told you he said, "One slipped from me and I had a heck of a time getting it back."

Q. I am speaking of the time of your deposition, you were asked——

A. At the time of the deposition, I didn't recall it.

Q. You didn't recall it at that time?

A. I didn't recall it at that time.

Q. Do you recall these questions and answers in your deposition:

"Q. (By Mr. Hamblen): Notwithstanding this admonition from Dr. Lowell about working, doing heavy work, he did proceed, as you [53] have already testified, to attempt to unload those wheat sacks?"

"A. He attempted to unload the wheat there, sure."

"Q. And he did that voluntarily and deliberately on his own, did he not?"

"A. Why, sure, nobody forced him to do that. He went out to unload the wheat, yes, sir."

Do you recall those questions and answers?

(Testimony of Nova Garrett Walsh.)

A. I do.

Q. And are they correct today?

A. When the man was sent to Spokane to take x-rays, somebody had to unload the wheat. It isn't likely a man would ask his wife to do it, if he was possibly able himself.

Mr. Hamblen: I think that is all.

Mr. Raftis: That is all, Mrs. Walsh.

The Court: When you get the wheat sacks at the elevator, they are these sewed sacks of wheat?

A. That's right, they are sewed.

The Court: The top has two ears, one on each side?

A. Mr. Brushenham charged me a dollar and forty cents—I mean, charged me for 140 pounds in these sacks. I bought the same this year from Hoddy, 135 pounds, so [54] there may be a variation of five pounds, I don't know.

The Court: When you transported them, this was a flat-bottomed truck without any sides on it, as I understand it?

A. There was a rack on it.

The Court: Oh, there was?

A. They call them a flat-bed truck.

The Court: A flat bed, but it had racks on the side?

A. Yes. I think when you buy a license, I believe you pay for a flat-bed truck. It is a 2-ton truck.

The Court: But it has removable sides that make a rack if you put them on?

(Testimony of Nova Garrett Walsh.)

A. Yes, you can take them off.

The Court: How were the wheat sacks, were they standing up on end or down flat on the bed of the truck? A. They were laying down.

The Court: Laying down? A. Uh-huh.

The Court: And how many would you have crossways?

A. Well, some of them were. I think maybe some of them were standing up and some were lying down. And some of them were lying down, I know, because Mom and I each had to take hold of an ear and pull them up and drag them over to the back end of the truck. [55]

The Court: Ordinarily, unloading wheat sacks from the back of a truck, what you do is to catch the sack by the ears and pull it, you will slide it along the bottom and then lay it on the plank and there isn't any actual straight-up lifting of the sacks in the operation.

A. There would be, of course, on this little plank. You have to lift it up to get over the plank where the plank stuck over the bed.

The Court: You have the plank setting up in the end of the truck and then——

A. We had the plank sitting up over the edge about that high, like this, (indicating) and you would have to lift it a little bit.

The Court: You would have to either lift it or—— A. Lift it or upend it.

The Court: Upend it, lay it down across the plank? A. Yes.

(Testimony of Nova Garrett Walsh.)

The Court: Men usually do as little lifting as possible with those 140-pound sacks, usually slide them and roll them.

A. They should, if they don't. Mother and I certainly did.

The Court: I see. Any other questions?

Q. (By Mr. Hamblen): There wasn't any tail gate up on this flat bed, was there?

A. No, no tail gate. [56]

Mr. Raftis: May I ask one further question?

The Court: I think one point you made is that the end of the plank that stuck over into the truck would be sticking up. It was sticking up above the bottom several inches, probably?

A. That's right.

The Court: All right.

Redirect Examination

Q. (By Mr. Raftis): Did you personally observe that? A. Yes.

Q. The plank sticking up?

A. Definitely. I put about 30 more sacks down the plank, I should have.

Q. Yes. So you are talking now of what you knew directly? A. That's right.

Q. I want to go back a minute to the stomach disorders. I believe you have testified that there were symptoms or a feeling that he had a peptic ulcer?

A. Yes, I saw that on Dr. Lowell's record.

Q. I wanted to ask you another question. Was

(Testimony of Nova Garrett Walsh.)

they any other suspected ailment of the stomach that he thought he had besides ulcer?

A. Definitely. I wish I had the money back for all the [57] bottles of angell they fed him.

Q. What for?

A. For stomach trouble. That is to coat the stomach ulcers. He took plenty of ulcer treatment.

Q. Well, the point I am trying to bring out, without asking you directly about it, was there any other possible condition of his stomach besides ulcer that you were concerned about or he was concerned—

A. Well, vomiting and gas, he was so full of gas most of the time, thought it was due to his stomach, and he couldn't eat. Many times I have prepared a meal for him and he couldn't eat it. He just refused to eat, he was so sick.

Q. Did the doctor ever suggest in your presence, refreshing your recollection, that he might possibly have a cancer condition?

A. No, the doctor don't tell you you have a cancer. Even if they suspicion it, they wouldn't tell you. But he did tell him he was definitely sure he had peptic ulcer.

Q. I see. Well, the doctor didn't tell him that, in other words, about cancer?

A. No. No, I think that was probably in Ralph's own mind.

Q. Yes. Well, that is what I was trying to bring out.

(Testimony of Nova Garrett Walsh.)

A. He was so sure he had stomach trouble, seemed quite sure that he did. [58]

Mr. Raftis: That is all.

The Court: Any other questions?

Mr. Hamblen: I have one more, as long as Mrs. Walsh participated in unloading these wheat sacks.

Recross Examination

Q. (By Mr. Hamblen): They were quite heavy, had to be moved by deliberate, intentional action on the part of the party who was unloading them, didn't they? A. That's right.

Q. They didn't slide off by themselves?

A. No.

Q. They didn't unload themselves, did they?

A. No.

Q. A person, to unload them, had to intentionally either move them along or pick them up or roll them over onto the plank, isn't that right?

A. That's right, and they had to be put in the shed.

Q. As a voluntary, deliberate act?

A. Well, I don't know about that; I know you just don't move a sack of grain or anything without lifting it somewhat.

The Court: Any other questions?

Mr. Hamblen: No, that is all. [59]

Mr. Raftis: No more questions.

The Court: Court will recess for ten minutes.

(Whereupon, a short recess was taken.)

RALPH GARETT

called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Raftis): Ralph, now will you keep your voice up so his Honor can hear what you say, because the Court has to hear your testimony?

Will you give your name, please?

A. Ralph Garrett.

Q. And what relationship are you to Ralph H. Garrett, deceased? A. He was my dad.

Q. And Nova Garrett Walsh, what is your relationship to her? A. My mother.

Q. What is your age, Ralph? A. 15.

Q. And when is your birthday?

A. February 1st.

Q. You were 15 last February 1st. On September 24, 1953, then what was your age? [60]

A. 14.

Q. And are you attending school at Colville, Washington? A. That's right.

Q. What is your weight? A. Now?

Q. Yes, at the present time? A. About 130.

Q. And can you recall about what you weighed on September 24, 1953? A. About 125.

Q. How tall are you? A. Five, six.

Q. Five feet, six inches. Where were you living on September 24, 1953? A. Out on the ranch.

Q. Were you the only child in the family?

A. That's right.

Q. And what was your father's business?

(Testimony of Ralph Garrett.)

A. Farming.

Q. Had he been engaged in running the farm there for some time prior to September 24, 1953?

A. Yes, I guess so.

Q. Did he do the usual farm work around the place there? A. Yes.

Q. And did you assist him from time to time?

A. Yes.

Q. Now, on September 24, 1953, do you remember your father bringing to the farm home a load of wheat? A. Yes.

Q. What type of wheat was that, as you recall? That is, was it seed wheat? A. Yes.

Q. And how was it loaded up? Was it in containers or sacks? A. Sacks.

Q. And do you have personal knowledge of how many sacks were on the load?

A. About 43 or 44, I guess.

Q. Could you tell his Honor how those sacks were loaded on the truck, on the load; that is, were they standing up, were they flat, or just how were they put in the truck?

A. They was both, they was all ways.

Q. All ways, they were put in in different manners? A. Yes.

Q. Will you describe briefly the type of truck that the wheat was loaded on, Ralph?

A. Well, it was a Chev. 2-ton.

Q. 2-ton Chevrolet? A. Uh-huh.

Q. And what type of bed did the truck have?

A. Flat.

(Testimony of Ralph Garrett.)

Q. Flat bed. What do you mean by a flat bed?

A. Well, flat with side racks.

Q. Did it have a metal surface on the bed?

A. No.

Q. Wood? A. Wood.

Q. Wood surface. And what kind of sides were on the truck? A. Grain sides.

Q. And how high were they from the bed of the truck? A. Oh, about three feet.

Q. And the end of the truck, that is, the back end of the truck, what was the arrangement there?

A. You mean the way we got it off?

Q. Did it have a gate, what they call a board that lifts up and down on hinges?

A. Well, we didn't have anything. When we had the wheat on it, we had it out.

Q. Now, when your father brought this load of wheat on the 24th of September, 1953, were you at home when he arrived there? A. Yes.

Q. And did he request you to help him unload the wheat? A. Yes.

Q. Will you tell the Court, Ralph, just how he backed the [63] truck up about this building so that we may get the picture there of what you were doing?

A. Well, the cabins are setting—there is three right in a row there—

Q. Speak up louder. I think the Judge may not hear what you are saying.

A. There was three cabins there, right beside each other, and pulled up in there by the house and

(Testimony of Ralph Garrett.)

backed up right where the back of the truck was fairly close to the door.

Q. How far from the door of this building would the back end of the truck be, as nearly as you recall?

A. Well, about three or four feet.

Q. And, as I take it, you backed the truck up and then were going to take the wheat and slide it into this building?

A. That's right.

Q. Is that correct? And what did you use to bridge the space between the end of the truck and the building into which you were going to put this wheat?

A. Well, we had a 2 x 8, it was about 8 feet long.

Q. That is, a plank? A. Yes.

Q. And will you describe how that was set up as to the floor of the building and the bed of the truck?

A. Well, we had the truck backed up there with a plank [64] laying on top of the bed there and then down into the building.

Q. Was there a platform out of this building?

A. Yes.

Q. I think your mother described them as steps there.

A. Yes, there is three.

Q. What were they, just 1, 2, 3 up from the ground to the threshold of the door, I take it?

A. Yes.

Q. Was there an open space otherwise between the end of the truck and the building into which you were unloading the wheat?

A. Uh-huh.

Q. Now, then, what were your duties, Ralph,

(Testimony of Ralph Garrett.)

with reference to assisting in unloading the wheat?
What did you do?

A. I took the sacks from the plank down into the building and then set them down in there.

Q. Now, do I understand you, your father would take the sacks from wherever they were on the bed of the truck and bring them to the end of the truck to that plank? A. That's right.

Q. And did your father pick the sacks up and carry them, or how did he do it?

A. He slid them.

Q. Slid them along? [65] A. Yes.

Q. How would he do that? What part of the sack would be grab hold of?

A. Well, two ears, I guess, sticking up there.

Q. When they are sewed, they have ears on them so you could grab hold? A. Yes.

Q. Do you know yourself about how much those sacks weighed?

A. Dad said something they weighed about 140 pounds.

Q. And you have been around a farm enough to know what a sack of wheat is and what it weighs?

A. Yes.

Q. And when he would bring it to the end of the truck then, what would you do to get it into the granary, what you were using for a granary?

A. I would just slide it down that board there.

Q. Was your father unduly exerting himself or was there any unusual exertion in sliding those

(Testimony of Ralph Garrett.)

sacks along the base of the truck there, the bed of the truck?

A. He was just sliding them along there, that one started to fall off.

Q. Well, I am leading up to that. But up to the point where something unexpected occurred, was there any difficulty that he was having?

A. Huh-uh. [53]

Q. And how many sacks had he pulled over to the end of the truck before something unusual did occur? A. About nine.

Q. About nine sacks. And will you then describe to the Court, Ralph, what happened about the 9th or 10th sack that he was taking over to you?

A. Well, he got it over there to the board there and I started to take it and it got over-balanced there and started to falling off, and he reached out there and held it, grabbed ahold of it.

Q. Just tell the Court how he had to reach out and grab that sack and hold it.

A. Well, he was just standing there and reached out there real fast and it was about ready to go over.

Q. Well, had it started to fall over? A. Yes.

Q. And were you able to hold it, with your weight and size? A. No.

Q. And what was your father trying to do?

A. Hold it up there while I got around the other side.

Q. Was it necessary that you go around the other side to assist in getting the sack back up?

(Testimony of Ralph Garrett.)

A. Yes.

Q. Did your father have to lean over the end of the truck and hold the sack until you could get around there? [67]

A. Yes.

Q. Was that sack that he was holding the same weight that these other sacks you have described?

A. Yes.

Q. About 140 pounds, you have said. And up to that point, had your father shown any evidences or signs that he was in pain or distress?

A. No.

Q. And what happened after this sack had started to fall and he grabbed it? What happened as far as your father is concerned?

A. He walked over there to the front of the truck there and sort of reached hold of his chest.

Q. Well, just describe to the Court exactly what you saw and what he said, if anything, at that instant.

A. I didn't hear him say anything, but he just did like that (indicating).

Q. That is, he was standing upright or bending over?

A. No, he was bent over.

Q. Holding his chest?

A. Yes.

Q. What was his color, if you remember, or his expression, anything that might assist the Court to show what his condition actually was?

A. I don't know anything about that. [68]

Q. You don't know. In reaching over for this sack, had the sack gotten out on this plank?

A. Yes.

Q. So that was it necessary for him to reach out

(Testimony of Ralph Garrett.)

over the end of the truck? A. Yes.

Q. Did that require him to put himself in an awkward, unusual position? A. Yes.

Q. In what way?

A. Well, he had to sort of stoop over there, and I think his hand was out there holding onto the building with his other hand there hanging onto the sack.

The Court: I didn't understand what you said. One hand was on what? A. The building.

The Court: Oh, the building.

A. Sort of holding, bracing hisself.

Q. (By Mr. Raftis): He was holding that sack with one hand; that was ready to fall, I take it, that sack, if he hadn't held it? A. Yes.

Q. And after you got the sack straightened up, did you then put it in the granary? A. Yes.

Q. And when you came back to the truck, am I correct in stating that is when you noticed he was standing there holding his chest?

A. That's right.

Q. Was your father able to proceed, or did he proceed to unload any more sacks after that happened? A. No, he never.

Q. What did he do?

A. Well, Mom and Grandma come out about that time and helped him, helped me unload it. I kept telling Dad I could get it by myself; he wouldn't let me.

Q. I didn't get that?

(Testimony of Ralph Garrett.)

A. I kept telling Dad that I would unload the wheat by myself, but he wouldn't let me.

Q. So your mother and your grandmother came out? A. Yes.

Q. Did they then assist you in unloading the rest of the wheat? A. Uh-huh.

Q. Did your father do anything at all after he had reached over and caught this one sack that was falling? A. No.

Q. Where did he go after that?

A. In the house.

Q. Did you observe him there in the house after you got [70] through with your unloading?

A. I went in and ate.

Q. Did your father eat? A. Huh-uh.

Q. And did your father and mother then shortly thereafter leave for Spokane? A. Yes.

Q. About how long after this occurrence took place did your father and mother leave?

A. Well, about 20 minutes, I guess, 25.

Q. Ralph, would you say that your father was getting along all right, was having no difficulty unloading the wheat, up to this point where this sack got away on you? A. That's right.

Q. Had your father done this type of work before? A. Yes.

Q. Did this distress that he indicated after this sack had gotten away, did that continue until he and your mother had left the home? A. Yes.

Mr. Raftis: I believe that is all, Mr. Hamblen.

(Testimony of Ralph Garrett.)

Cross Examination

Q. (By Mr. Hamblen): Ralph, you had helped your father before, too, hadn't you? A. Yes.

Q. This same kind of work?

A. (Witness nods).

Q. Answer so the reporter can hear you.

A. Huh?

Q. Your answer is "yes"? A. Yes.

Q. And, as I understand it, it was entirely a matter of sliding the sacks over to the plank, sliding them down the plank, and then into this little building; is that right? A. Yes.

Q. And had you used a similar kind of plank before, like this one you were using that day?

A. Well, no.

Q. You don't recall ever using one just like that before? A. No.

Q. Well, this was kind of a balancing act as far as you were concerned, wasn't it? A. Yes.

Q. On your part of the job. Your father would slide the [72] sacks over, and would he lay them cross-wise on the plank?

A. No, he would stand them up.

Q. Oh, he would stand them up, so then you would pull them down onto the plank, is that right?

A. Yes.

Q. So that the length of the sack ran along with the length of the plank?

A. Well, we had the plank there and set the sacks up this way (indicating), and then kind of

(Testimony of Ralph Garrett.)

put my arm around it and make it go down, slide it down.

Q. I see. So that your part of the job started in when your father stood the sack upright there at the end of the plank? A. Yes.

Q. All you had to do was roll it down onto the plank and slide it down? A. Yes.

Q. If I don't describe it correctly, why, you are entitled to correct me.

When you took over on one of these sacks, were you standing on the little porch of the building or were you down some of the steps?

A. No, I was standing on the little porch.

Q. Actually, the flat bed backed right up almost to the [73] edge of the porch, did it not, and then the steps were down under the flat bed?

A. Yes.

Q. Because the flat bed does extend out beyond the wheels of the truck, doesn't it? A. Yes.

The Court: May I ask—I just want to get this picture as clearly as possible—about how long was the plank from the truck to the floor of the house?

A. It was about 9 feet long.

The Court: All right, go ahead, Mr. Hamblen.

Q. (By Mr. Hamblen): But most of that plank was over the porch, wasn't it? A. Yes.

Q. Did the plank extend across the porch and through the door into the cabin? A. Yes.

Q. So that by the time you got the sack off the plank, you were inside the cabin, weren't you?

A. Yes.

(Testimony of Ralph Garrett.)

Q. Most of the plank was over the porch and not over any gap, isn't that right? A. Yes.

Q. If a wheat sack fell off the plank, it fell on the porch, didn't it? [74] A. Yes.

Q. And, as I understand it, there were three steps up to the porch from the ground? A. Yes.

Q. And the flat bed was about three feet high, and how high was the porch?

A. Well, about a foot and a half.

Q. A foot—— A. Two feet.

Q. So there was only a difference in level there of a foot to a foot and a half between the cabin floor or the building floor and the floor of the flat bed; isn't that right? A. Yes.

Q. Something about a foot or foot and a half?

A. About two feet, I guess.

Q. About two feet, all right. Now, then, as I understand it, if a sack did fall off of the plank, it would fall on the porch of the building?

A. Yes.

Q. And you could take it there, then, by the ears and drag it on in on the floor? A. Yes.

Q. And you did do that, didn't you, occasionally? A. Huh-uh. [75]

Q. You didn't. This was the first time that any sack over-balanced, is that right? A. Yes.

Q. Now, when this particular sack over-balanced, your father had brought it up and set it down there, as I understand it, standing up; is that right?

A. Yes.

Q. And you came up in the usual way and took

(Testimony of Ralph Garrett.)

hold of it, is that right? A. Yes.

Q. And you started to bring it down on the plank, did you? A. Yes.

Q. Did you have hold of the ears at the time?

A. No, I had my arm around it.

Q. You had your arm around it. Which arm did you have around it?

A. This one (indicating), the right.

Q. Your right arm? A. Yes.

Q. If this were the plank, you would come up on the right side—well, let's see, better get our sides straight here.

You would come up facing the back end of the truck, wouldn't you? A. Yes. [76]

Q. Standing on the porch, and then you would turn around with your right arm and grab the sack, is that right? A. Yes.

The Court: Were you on that same side of the plank? A. Yes.

The Court: On the right side, facing the truck?

A. Yes.

The Court: Is that right? The way Mr. Hamblen is there; that is, you would be on the right side of the plank facing the truck?

A. Well, like I was, the truck would be on this side (indicating).

The Court: On that same side Mr. Hamblen is on there.

Q. (By Mr. Hamblen): Step down here, Ralph, will you, and pretend that the witness box is the

(Testimony of Ralph Garrett.)

truck. Now, here is your Dad standing up here; here is the cabin over here (indicating).

A. Go down this way and then grab it like that (indicating).

Q. With your right arm? A. Yes.

Q. Turn around and face back toward the cabin and ease the sack down on the plank? A. Yes.

Q. I see. [77]

The Court: You may sit down there.

Q. (By Mr. Hamblen): So this particular sack your Dad had set there, and you came up in that usual way and put your arm around it; is that right? A. Yes.

Q. And as you laid it down on the board——

A. I didn't lay them down; standing them like that, they would stand straight up.

The Court: You slid them down standing up on end? A. Yes.

Q. (By Mr. Hamblen): Oh, I see. I thought you laid them down more. A. Yes.

Q. You just held them standing up and slid them down that way? A. Yes.

Q. All right, now, at that time, with that sack, how far did you get with that sack when it started to lose its balance or get out of control?

A. Oh, about six, eight inches, I guess.

Q. You started to move it down the plank?

A. Yes.

Q. And did it start to go away from you on the other side or toward you? A. Yes, away. [78]

Q. Away from you. And how far away did it get?

(Testimony of Ralph Garrett.)

A. Oh, got about like that (indicating), I guess, and Dad got hold of it.

Q. About, would you say, a 45-degree angle?

A. Yes.

Q. You know what a 45-degree angle is, don't you? A. Uh-huh.

Q. About halfway from the perpendicular to a horizontal position. And did you call to your Dad as it started?

A. No, he was standing right there.

Q. He was standing right there?

A. Just a little way away from it.

Q. He didn't have his hands on it at that time, did he? A. No.

Q. As it started to fall. And, apparently, he saw it and reached out and held it in that 45-degree position? A. Yes.

Q. And you ran around the plank on the other side, is that right? A. Yes.

Q. Pushed it back up? A. Yes.

Q. Didn't have any trouble pushing it back up, did you?

A. Oh, took a little strain, but I did.

Q. Took a little strain? [79] A. Yes.

Q. Well, you were able to do it, though, weren't you? A. Yes.

Q. Then you slid it on down and in the regular way? A. Yes.

Q. So all your Dad did was reach out, when he saw the sack tipping over, and hold it there?

A. Yes.

(Testimony of Ralph Garrett.)

Q. He didn't stumble or slip or fall off the truck, did he? A. No.

Mr. Hamblen: That is all.

Mr. Raftis: Just a couple of questions.

Redirect Examination

Q. (By Mr. Raftis): Ralph, just a little further on the position that your father assumed when he grabbed this sack. Did this sack start to get away from you suddenly, or just describe how that was?

A. Well, I don't know, it just kind of went over easy, and then I thought I still had it so I never said anything, started falling a little faster.

Q. In other words, was the sack getting away from you? A. Yes. [80]

Q. And I believe you stated your father did not have hold of the sack at that time?

A. That's right.

Q. And state whether or not then he made a sudden lunge, or what did he do to grab hold of that sack before it fell? I don't want to testify for you, but you tell the Court what your father had to do to catch that sack. A. He made a quick—

Q. Huh?

A. Made a quick jerk at it, I guess, or grab.

Q. Well, was it something that came up suddenly? A. Yes.

Q. And from where he was standing, just describe how he ran over and grabbed that sack?

A. He took about half—about a step, I guess, and then reached down and grabbed.

(Testimony of Ralph Garrett.)

Q. Was the sack falling when he grabbed it?

A. Yes.

Q. And then he held it there with one hand while you ran around the truck to get around the other side to help [81] push it back up?

A. Yes.

Q. And were you trying to hold it from the other side? A. Yes.

Q. And you stated, I think, it was about at a 45-degree angle when your father caught it? A. Yes.

Mr. Raftis: That is all.

Recross Examination

Q. (By Mr. Hamblen): If he had let it fall, it would have dropped on the porch, wouldn't it?

A. Yes.

Q. You had your back to him at the time that the sack started to go over, didn't you? A. Yes.

Q. And, as you have said, it started easy at first, didn't it?

A. Yes, got around where I was using both hands, you know, both straight at it.

Q. First, it started to go a little bit, you had one arm; then you put another one around yourself, did you?

A. Well, yes, I was facing about like that (indicating) and standing up in here.

Q. And it went about 45 degrees over and you had both arms around it at that time? A. Yes.

Q. And then is when your dad reached out and grabbed it, is that right? [82] A. Yes.

(Testimony of Ralph Garrett.)

Q. He hadn't grabbed it before that, had he?

A. No.

Q. And you were holding it in that angle, were you, when he took hold of it?

A. Yes, trying to. I didn't have my hands like that.

Q. Well, no, but you had them both on the sack?

A. Yes.

Mr. Hamblen: That is all.

Mr. Raftis: I might ask just a couple of more questions, your Honor.

Redirect Examination

Q. (By Mr. Raftis): Ralph, if your father hadn't grabbed the sack, would it have fallen to the ground? A. Yes.

Q. Had it gotten out of your control?

A. Yes.

Q. Now, after your father grabbed the sack and you got it straightened up, how long after that was it that you noticed your father holding his chest?

A. Well, we got it straightened up there and I took the sack in the building there, and then I come back out and there he was. [83]

Q. Would it be almost immediately, that is, within a minute? A. Yes.

Q. And had he shown any symptoms or signs of pain prior to the time he grabbed the sack?

A. No.

Mr. Raftis: That is all.

(Testimony of Ralph Garrett.)

Recross Examination

Q. (By Mr. Hamblen): Well, I don't want any misunderstanding on this, Ralph, I thought you said if the sack had fallen, it would have fallen on the porch? A. Yes.

Q. That is what you meant when you said "ground" here with Mr. Raftis; you meant it would have fallen down on the porch of the building?

A. Yes.

Q. Now, your father didn't straighten the sack up; he just held it there, didn't he? A. Yes.

Q. You were the one that straightened it up?

A. Well, we both did.

Q. He still had hold of it? A. Yes. [84]

Q. But while you were going around, he didn't attempt to straighten the sack up? A. No.

Q. He just held the one hand against the building and one hand on the sack like that (indicating); isn't that right? A. Yes.

Mr. Hamblen: All right, that is all.

Redirect Examination

Q. (By Mr. Raftis): Just one final question: Was he leaned over when he was doing that?

A. Yes.

The Court: When you got these sacks down into the building, you slid them up on end or slid them down on end on the plank? A. Yes.

The Court: Then you pulled them over against the wall, laid them down on the floor?

A. Well, just standing them up.

(Testimony of Ralph Garrett.)

The Court: Oh, you stood them up?

A. Against each other.

The Court: Oh, you slid them off away from the door, I suppose? [85]

A. Yes.

The Court: There was room for all of them in there standing on end without double-decking them?

A. Yes.

The Court: That is all.

Mr. Raftis: That is all.

Your Honor, I would like to call Dr. McKinlay before noon.

The Court: Oh, yes. I wanted to ask the boy another question.

Mr. Raftis: Just go back on the stand.

The Court: This was seed wheat that your father was bringing out from Colville, I understand?

A. Yes.

The Court: To sow the fall or winter wheat, wasn't it?

A. Yes.

The Court: Was that the only load that he got that fall?

A. Yes.

The Court: This was the first load he had brought out in the fall of 1953?

A. Yes.

The Court: That is all my questions. [86]

Recross Examination

Q. (By Mr. Hamblen): He handled other loads in other years and you had helped him, hadn't you?

A. Yes.

The Court: All right.

Mr. Raftis: That is all.

(Witness excused.)

Mr. Raftis: Dr. McKinlay, would you come forward, please?

D. WILSON MCKINLAY

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

Direct Examination

Q. (By Mr. Raftis): Dr. McKinlay, will you give your name to the reporter, please, for the record? A. D. Wilson McKinlay.

Q. Where do you reside, Doctor?

A. 3504 Riverview Drive, Spokane.

Q. What is your profession?

A. I am an M.D., family doctor.

Q. And for how long have you been engaged in the practice of your profession last past? [87]

A. Since 1938, I finished my training.

Q. Will you state for the record of what schools you are a graduate? A. Medical school?

Q. Yes?

A. The College of Medical Evangelists, Los Angeles.

Q. Do you engage in the general practice of medicine? A. I do.

Q. And where is your office in Colville?

A. Spokane. 526 West Garland.

Q. Pardon me, I forgot I was away from home. I didn't get your answer?

A. 526 West Garland Avenue.

(Testimony of D. Wilson McKinlay.)

Q. You are in the Garland District in Spokane?

A. That's right.

Q. How long have you been in Spokane, Doctor?

A. Since the fall of '45.

Q. And in the course of your practice, Doctor, state what particular diseases you treat, or is it a general practice?

A. Well, there is one wag said, "I treat the skin and its contents." I am a family doctor.

Q. It is a general practice?

A. That's right.

Q. In the course of your practice, do you have stomach, [88] heart disorders, and things of that nature? A. Yes, sir.

Q. Comes within your general practice. I will ask you to state, Doctor, if you had occasion, on or about September 24, 1953, to attend a Ralph H. Garrett? A. I did.

Q. Will you relate briefly the circumstances of your being called to attend him and then what happened?

A. Yes. I was on the emergency call that 24-hour period for the Spokane County Medical Society, and in the evening, I have forgotten the hour, I was called from the Medical Service office to take a call at the Pedicord Hotel for a Mr. Ralph Garrett.

I hurried down there to the hotel and was taken to his room.

Q. And did you then meet Mr. Garrett?

(Testimony of D. Wilson McKinlay.)

A. I met Mrs. Garrett first and then Mr. Garrett on the bed.

Q. Had you ever met or known these parties before? A. No.

Q. Will you state for the record, Doctor, what notes you have showing the history for the diagnosis you made at the time of your arrival at the hotel?

A. Well, the record I have is rather brief on my card. It said: "Patient was down from Colville for x-rays [89] of the stomach ordered by Dr. Lowell."

Then for history, all I had was: "Unloaded wheat sacks before leaving for Spokane. Pain all the way to Spokane; had pain in chest, had ignored it, thinking it was associated pain from stomach. Pain kept increasing until seen in the hotel."

And I gave him half grain of morphine and sent him to the hospital by ambulance.

Q. Do you recall of your own recollection anything further that was said or done when you first met Mr. Garrett?

A. In regard to his illness?

Q. Yes?

A. Nothing more than that they thought this was stomach complication, thinking possibly it was perforated, you know. They were a little surprised when I said, "No, I think this is a coronary. It is very serious, we must get him to the hospital right away." But they were still thinking in terms of it being the condition for which he was being treated and for which he was sent here for x-rays.

(Testimony of D. Wilson McKinlay.)

Q. Did he give you some history or his wife give you some history of prior stomach situation?

A. Yes, that is what she greeted me with was the fact he was down here for x-rays of the stomach. He had been [90] having pain in his stomach.

Q. Well, what then did you do with reference to further treatment?

A. Hospitalized him and started the usual procedures that you would for a man in acute shock, as he was given oxygen and intravenous fluid and heavy doses of opiates to relieve his severe pain. I left other orders, but there was not time to carry them out, such as running an electrocardiogram, because the man died the following morning.

Q. When you first saw Mr. Garrett, will you state to the Court just what his condition was with reference to being in pain or otherwise?

A. When I first saw him?

Q. Yes?

A. Well, he was in extreme pain. It was very apparent from the pallid expression, the color of his face and the anguished expression and the fact he couldn't lie still. It was a typical picture of a man suffering from coronary heart disease—shock, blood pressure was down, pulse was rapid.

Q. Did he give you any particular history of this episode of unloading the wheat that evening?

A. I don't believe he did, no. I don't think I had any history from him, to speak of. I know he tried to [91] answer questions, but he was in such pain his wife interjected the answers. And, of course,

(Testimony of D. Wilson McKinlay.)

they were both very much upset and I wasn't trying to get history at the time.

Q. Yes, that's right.

A. It was a matter of taking care of acute shock, and whether I was correct in diagnosing it as coronary or not, the treatment would be the same—to get him to the hospital to determine whether or not it might have been a perforation of a viscus, such as stomach or gall bladder, but the original picture was so typical of coronary, I felt sure that is what it was, and it turned out that it was.

Q. Will you relate briefly what transpired after you got him to the hospital?

A. The usual routine care by the nurses under my orders, setting up intravenous fluids and that sort of thing. Is that what you mean, nursing care?

Q. Yes.

A. The usual care, giving him oxygen as quickly as we could get the apparatus set up, and I don't recall exactly how much more opiates we had to give. I had already given him a half a grain at the hotel, which is twice the usual dose we give for severe pain, but for coronary type pain it usually takes up to a half [92] grain.

Q. Did this condition of distress and pain continue up until the time Mr. Garrett passed away from the time you first saw him?

A. Oh, I'm sure the pain—I couldn't answer that accurately, I wasn't with him. Furthermore, we kept him properly sedated. If the pain would start to show up, as is the rule with all such pa-

(Testimony of D. Wilson McKinlay.)

tients, we have to fight the pain in order to give the heart as much chance as possible, so that the order was to give him all of the morphine that he would require to keep him from suffering.

Q. The purpose of my query was to determine whether or not there had been any other event or agency that had intervened to account for this pain other than what existed when you first saw him?

A. Well, not so far as I know, there was nothing further.

Q. When did Mr. Garrett die, what time of day?

A. I didn't put that on my card. It might be—it should be on the death certificate.

Mr. Raftis: Do you have that death certificate, Mr. Hamblen? Do you mind if we put that in evidence?

Mr. Hamblen: No, I was going to if you didn't.

The Court: You want to put it in evidence?

Mr. Raftis: Yes, your Honor. [93]

The Court: That would be Plaintiff's 3?

The Clerk: Yes, your Honor.

A. The hour should be on there. I don't recall exactly.

Mr. Raftis: I will show it to you in just a moment.

Q. Handing you Plaintiff's Exhibit 3 for identification, Doctor McKinlay, will you examine the record, certified record, and state if that is a true and correct record of the certificate of death which you prepared for Ralph H. Garrett?

A. It is, yes.

(Testimony of D. Wilson McKinlay.)

Q. And your name appears at the bottom?

A. Right there, yes (indicating). It is type-written in there, the signature.

Q. A certified copy? A. Yes.

Q. Shows 11:20 a.m.

The Court: All right.

Q. (By Mr. Raftis): That would be on the 25th? A. That's right.

Mr. Raftis: We will offer this in evidence, your Honor, as Plaintiff's Exhibit No. 3.

Mr. Hamblen: Join in the offer.

The Court: It will be admitted. [94]

(Whereupon, the said certified copy of death certificate was admitted in evidence as Plaintiff's Exhibit No. 3.)

Certified Copy of Death Certificate
WASHINGTON STATE DEPARTMENT OF HEALTH
DIVISION OF VITAL STATISTICS

Burial Permit No. 7902

CERTIFICATE OF DEATH

Registered No. 1587
 Reg. Dist. No. M-1

PLACE OF DEATH COUNTY SPOKANE		2. USUAL RESIDENCE (Where deceased lived. If institution: residence before admission.) a. STATE Washington b. COUNTY Stevens	
CITY (If outside corporate limits, write RURAL and give township) SPOKANE		c. CITY (If outside corporate limits, write RURAL and give township) Colville	
FULL NAME OF HOSPITAL OR INSTITUTION St. Lukes Hospital		d. STREET (If rural, give location) ADDRESS 9 mi. S.E.	
NAME OF DECEASED a. (First) Ralph b. (Middle) Howard c. (Last) Garrett		4. DATE OF DEATH (Month) (Day) (Year) 9 25 1953	
5. COLOR OR RACE W		7. MARRIED, NEVER MARRIED, WIDOWED, DIVORCED (Specify) M	
8. DATE OF BIRTH 10/15/10		9. AGE (In years last birthday) 42	
10a. KIND OF BUSINESS OR INDUSTRY Farmer		11. BIRTHPLACE (State or foreign country) Nebraska	
10b. KIND OF BUSINESS OR INDUSTRY Self		12. CITIZEN OF WHAT COUNTRY? USA	
OTHER'S NAME Franklin Garrett		14. MOTHER'S MAIDEN NAME Louise Kroesing	
13. DECEASED EVER IN U.S. ARMED FORCES? (If yes, give war or dates of service) —		18. SOCIAL SECURITY No. 520-05-8066	
17. INFORMANT Mrs. Nova Garrett			

1. DISEASE OR CONDITION DIRECTLY LEADING TO DEATH* (a)..... <u>Coronary Occlusion</u>		INTERVAL BETWEEN ONSET AND DEATH
ANTECEDENT CAUSES Morbid conditions, if any, giving rise to the above cause (a) stating the underlying cause last. Due to (b)..... <u>Arteriosclerosis</u> Due to (c).....		
II. OTHER SIGNIFICANT CONDITIONS Conditions contributing to the death but not related to the disease or condition causing death.		

19b. MAJOR FINDINGS OF OPERATION		20. AUTOPSY! Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
21b. PLACE OF INJURY (e.g. In or about home, farm, factory, street, office bldg., etc.)		21c. (CITY, TOWN, OR TOWNSHIP) (COUNTY) (STATE)	
21e. INJURY OCCURED While at work <input type="checkbox"/> Not while at work <input type="checkbox"/>		21f. HOW DID INJURY OCCUR!	

I hereby certify that I attended the deceased from 9-24, 1953, to 9-25, 1953, that I last saw the deceased on 9-25, 1953, and that death occurred at 11:20 AM, from the causes and on the date stated above.

23a. SIGNATURE (Degree or title) L. McKinlay, M.D.		23b. ADDRESS 520 W. Garland		23c. DATE SIGNED 9-26-53	
24b. DATE 9/25/53		24c. NAME OF CEMETERY OR CREMATORY Highland Cemetery		24d. LOCATION (City, town, or county) (State) Colville Wash	
REG. BY LOCAL REG. REGISTRAR'S SIGNATURE Wm. R. Murlin, M.D.		25. FUNERAL DIRECTOR ADDRESS Moser-Egger Fun'l. Home Colville, Wash.			

I Hereby Certify, That the foregoing is a true copy of the certificate of death of

Ralph Howard Garrett
 filed with the Bureau of Vital Statistics of the Board of Health
 of the City of Spokane, Washington.

This is...the...second...certified copy issued on above record.

Katherine Manetsch
 Dep. Registrar
 Spokane, Wash., Oct. 8, 1953

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(Testimony of D. Wilson McKinlay.)

Q. (By Mr. Raftis): Dr. McKinlay, after the death of Mr. Garrett, at or about 11:20 a.m. on September 25, 1953, did you cause to have an autopsy performed upon his body?

A. Yes, I did.

Q. Was that under your direction?

A. That, of course, is according to law, it would have had to have been done by law, anyway, but, of course, we always want to have verification or an opportunity to find out for sure what the cause of death was to see if our clinical judgment was correct, and so I ordered it.

Q. Did some other medical doctor assist you in that work?

A. The autopsy was performed by Chris Christianson, the Pathologist at St. Luke's Hospital.

Q. Was that at your request and under your direction?

A. Yes and no. I always ask for autopsies on people who have passed away if I am not completely positive of their condition. In the hospital, we also have an effort made to get autopsies on all patients who die in the hospital for clinical purposes, and, of course, in [95] this case, as I stated a moment ago, it would have had to have been performed by law, anyway, since I was not the family doctor and he had not been seen within 24 hours by his own doctor.

Q. Well, then, in any event, an autopsy was performed?

A. It was done, yes.

(Testimony of D. Wilson McKinlay.)

Q. And are you familiar with the results of that autopsy? A. Yes, sir.

Q. That is what I was getting at. What did the autopsy show with reference to the condition and cause of death of Ralph H. Garrett?

A. The autopsy showed an advanced condition of arteriosclerosis of the coronary arteries, known non-technically as arteriosclerosis, with marked narrowing of the lumens of two of the arteries and complete closure of one, with some scar tissue of the muscle area supplied by that particular artery, indicating an old infarct.

Mr. Hamblen: Indicating what?

A. An old infarct, i-n-f-a-r-c-t—I'm sorry—an old scar, indicating that that had closed sometime in the past preceding his present illness.

It showed a marked narrowing of the anterior circumflex descending artery, with a fresh thrombus plugging it, and with the muscle supplied by that particular artery hemorrhagic and, under microscopic [96] examination, already undergoing necrosis, verifying the fact that he had had an acute coronary attack very recently; in other words, verifying the clinical diagnosis that we had made both at the hotel and again in the hospital.

Q. This last condition you have described, the acute condition, was that the direct cause of the death of Ralph H. Garrett, in your opinion?

A. Yes, sir.

Q. And when you use the word "acute," what does it signify? I don't know.

(Testimony of D. Wilson McKinlay.)

A. "Acute" means something sudden.

Q. I see. And you heard the testimony of Mr. Garrett's son here a few moments ago, I take it?

A. Yes, I did.

Q. Now assuming the correctness of the statement of the son, that on September 24, 1953, at the home of Mr. Garrett near Colville, Washington, he and his son were engaged in unloading sacks of wheat weighing around 140 pounds each, and the sacks of wheat being handled by the father in the manner described by his son, namely, pulling them along the bed of the truck and leaning them on that plank, where his son would take the sacks into the granary; assuming that suddenly one of the sacks got away from the son and was on the plank; the [97] father, who was standing within a step or so away, made a sudden lunge forward and grabbed the sack with one hand, the sack weighing around 140 pounds, and bracing himself against the granary with the other hand, and being in a forward and stooped-over position and holding the sack for sometime, a few seconds, at least, until his son could get around the truck to assist in pulling the sack of wheat back; and assuming that in that position and as a result of that sudden happening, the father, Mr. Garrett, helped straighten the sack and then immediately thereafter felt a severe pain in his chest which caused him to cease any further work; and assuming that thereafter he was unable to eat and the pain persisted and he started for Spokane, and by the time he had arrived here, was

(Testimony of D. Wilson McKinlay.)

in extreme physical pain, taken to the hospital, where you were called to attend him; assuming all these facts as correct, Doctor McKinlay, I will ask you if, in your opinion, the coronary attack which you have described was brought about by this sudden strain in catching and holding and lifting this particular sack of wheat?

Mr. Hamblen: Just a minute, Doctor.

We object to the question on the ground that it is a hypothetical question, incorrectly states the facts in part, with particular reference to the assumption that [98] the father made a sudden lunge, which was unsupported by the evidence, and on the further ground that it is incomplete in that it doesn't include the rest of the facts, namely, that he had been in the process of moving and dragging some eight or nine other heavy sacks of wheat along the flat bed of the truck.

Mr. Raftis: Yes, well, I am willing to include those additional factors.

The Court: You heard the testimony of the son?

A. I did, yes.

The Court: Well, assume as a part of the question, then, that the father had previously dragged across the truck in the manner described here—was it nine sacks, I believe?

Mr. Raftis: Approximately nine sacks.

The Court: And also modify the question that, instead of lunging, taking a sudden lunge for the sack that was over-balanced on the plank, that the father suddenly grabbed——

(Testimony of D. Wilson McKinlay.)

Mr. Raftis: Yes, that will be satisfactory.

The Court: —suddenly grabbed the sack. With those alterations, will you undertake to answer the question?

A. I think the best way I can answer it would be this:

That any time you have narrowed coronary arteries, and, [99] as the pathologist stated, one of these was narrowed to about one-third of its normal diameter, the amount of blood that would go through that coronary to supply the cardiac muscle would be a definite limited amount of blood, which would be sufficient for a man to do ordinary exertion, if done slowly so that he does not build up a tremendous amount of need for blood in the heart.

Assuming, as has been asked, that he had been dragging these sacks across, and assuming that he was doing it, as some of the rest of us would, as we have done in the past years, was dragging wheat sacks around, he was moving at a steady pace and having no pain while doing that; but when he made this extra exertion of supporting his own weight by leaning across the distance from the truck to the house and supporting partially the weight of the sack, and immediately after had the pain; it would be reasonable to assume that the amount of blood needed for the heart to take care of the extra exertion above what he had been doing would have been sufficient to produce an anoxia of the heart muscle, which in turn sets up the chemical changes that produce a thrombus, and the thrombus itself

(Testimony of D. Wilson McKinlay.)

then acts as a cork or a plug, stopping all blood from going through. [100]

Does that answer your question?

Mr. Raftis: Yes.

The Court: The thrombus is what might loosely, in lay language, be called a blood clot? That's right, isn't it?

A. That's right, yes.

Q. (By Mr. Raftis): And from your autopsy and examination, you determined this blood clot, I believe, to be rather fresh or new?

A. Yes, sir, it was a recent blood clot.

Q. Yes. And assuming, Doctor, as we have already stated, that the pain appeared immediately, would that be a natural consequence of this condition that you have related that you found later? Would that bring on the sudden pain?

A. The sudden onset of pain is always associated with the sudden plugging of the vessel.

Q. In other words, that, in your opinion, occurred while he was engaged in handling this single sack, assuming that the pain appeared immediately thereafter or within a few seconds thereafter?

A. Well, assuming the story I heard, I would certainly say that the closure of that vessel took place while he was holding the sack or within seconds thereafter. In other words, it takes a few seconds, at least, for the [101] blood clot to form sufficiently to stop blood going through, and, if I might explain by other types of things, we are all acquainted with such as a man going deer hunting and

(Testimony of D. Wilson McKinlay.)

he gets along fine until he picks up the deer. He picks up the deer and, wham, he has a pain and the onset of his coronary when he takes this unusual extra exertion.

The Court: The pain, the typical pain, is a chest pain, isn't it, from coronary?

A. That is typical, yes. It may be abdominal. Many times it is misunderstood and patients sometimes are even rushed to surgery for operations on a stomach or a gall bladder, only to find to the doctors' chagrin that it was a coronary and not what he thought it was and the patient not helped by surgery. But, typically, it is a chest pain, sir.

The Court: I had hoped that we could get through with Dr. McKinlay, let him go back to his office. I think that would be impossible, unless we run quite late, because we would have some substantial cross examination here, I assume.

Mr. Raftis: Doctor, can you be back at 2 o'clock?

A. Yes, I will be.

The Court: I will leave it with you, which do you prefer 1:30 or 2? [102]

A. 1:30, I would prefer.

The Court: All right, I will recess, then, until 1:30. I think we can all get back by that time.

A. Thank you.

(Whereupon, the trial in the instant cause was recessed until 1:30 p.m., this date.)

1:30 o'clock p.m., October 21, 1954.

(The trial in the instant cause was resumed pursuant to the noon recess, all parties being present as before, and the following proceedings were had, to-wit:)

D. WILSON McKINLAY

having previously been duly sworn, resumed the stand and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Raftis): Dr. McKinlay, based upon the history of the facts in this case, as heretofore pointed out, state whether or not, in your opinion, the death of Ralph H. Garrett on [103] September 25, 1953, was directly due and caused by this injury to his heart suffered in the manner heretofore related, namely, the handling of this sack of wheat that was in the process of falling on this plank that has been described.

Mr. Hamblen: Objected for the same reason as before, your Honor.

The Court: Well, I think it might be objectionable in assuming as a fact that he suffered an injury to his heart, which is an issue in controversy here.

I think you might ask him if, in his opinion, it was caused by an injury which he sustained at that time. In other words, my objection to your question, Mr. Raftis, is that it seemed to state as a fact that he suffered an injury to his heart.

Mr. Raftis: Withdraw the question, I will re-

(Testimony of D. Wilson McKinlay.)

frame it, your Honor. I am trying to get started on a trend here.

Q. Doctor McKinlay, in your opinion, did the sudden strain experienced by Mr. Ralph H. Garrett in taking hold of the single sack of wheat which was about to fall from the plank, as was heretofore described and discussed, in your opinion, was that sufficient to cause damage and injury to his heart?

Mr. Hamblen: We object again when the question assumes there was a sudden strain. [104]

Mr. Raftis: Well, I was trying to keep out any hypothesis.

Mr. Hamblen: Well, if you are stating it in a hypothetical way, assuming there may have been a sudden strain.

Mr. Raftis: Well, let's put it that way.

The Court: Yes.

Mr. Raftis: Go at it piece-meal.

Q. In your opinion, Dr. McKinlay, what would have been the effect on the heart of Ralph H. Garrett of the acts which he did, which have been previously testified to by his son and which were contained in the hypothetical question which I asked you with respect to this occurrence on September 24, 1953?

The Court: The record may show your continuing objection.

Mr. Hamblen: Yes.

The Court: Which includes the former question.

Mr. Hamblen: That's right, the same objection.

(Testimony of D. Wilson McKinlay.)

The Court: Without repeating it. All right, go ahead, Doctor, you may answer it.

A. Well, I best understand the question. I would say that, assuming the history given by the son as accurate and with my own personal knowledge of wheat sacks, as I try to visualize what happened, I would say that there certainly was sufficient extra exertion to produce a [105] sudden strain on the heart sufficient to precipitate such an acute coronary occlusion.

Does that—

Q. (By Mr. Raftis): Yes, that answers the question.

In your opinion, Dr. McKinlay, was the injury to the heart, having in mind the history of the case, due to natural causes?

A. Well, certainly, natural causes had built up a situation to produce a weakened heart, but the history of sudden exertion would, I suppose—I don't know the legal end of it—but from the medical standpoint—would have precipitated an occlusion in that damaged heart.

Q. My question was, was the injury due, in your opinion, to natural causes, or was it due to this sudden exertion, having in mind the history of the case?

A. Well, may I ask for a little clarification, Judge?

The Court: Yes, all right.

A. Are we to assume the condition of the heart?

Q. (By Mr. Raftis): Yes, as you found it later.

(Testimony of D. Wilson McKinlay.)

A. As the base line, so to speak? Then, are you asking, did he die from natural causes as a result of the changes in the blood vessels of the heart, or was there something superimposed on that?

Q. That is what I am getting at, was there something in [106] addition to natural causes which brought about his death?

A. Well, then, that would be repetition of what I have already stated—I thought I had—that the condition of the heart was definitely damaged preceding this incident.

Q. That's right.

A. But the sudden exertion, as described, would be sufficient, in my opinion, to have precipitated or produced the thrombus which produced his death.

Q. I believe you have testified that there was a limited flowage of blood in the heart normally?

A. In that particular heart, yes.

Q. Yes.

A. It had been closed down to approximately one-third its normal diameter.

Q. And from what you have stated, I believe, that he apparently was able to pull these wheat sacks over the plank without suffering any pain?

Mr. Hamblen: Object to that. The doctor isn't a witness who can answer the question.

The Court: I think it is leading, too.

Mr. Raftis: It is a little leading, I will agree with your Honor.

Q. Let me put it this way: Had he not suffered this [107] sudden exertion that has been related,

(Testimony of D. Wilson McKinlay.)

what would you say, Doctor, with reference to the likelihood as to his continuing to live, that is, as to a period of time in the future?

A. Well, I am not God, all I could state would be that people with damaged coronary arteries continue to live until something, either a sudden severe exertion produces the thrombus or until the vessels finally close down to the point that they cannot carry enough blood to keep the heart going, so that this man did have an acute thrombus which plugged the artery that had been carrying sufficient blood, because he was alive before, without pain, it had been carrying enough for his normal living. So I would have to assume, from my knowledge of heart function and coronary disease, that he would have lived an indefinite period if he had not had some acute strain to produce that.

Indefinitely, in my opinion, whether it would be hours, days, or years.

Q. Well, yes, I understand that. From your previous testimony, I believe I would be correct in stating, that there was not normally a sufficient shutting off of the bloodstream to bring about that condition without the aid of some unusual or unforeseen strain; is that correct? [108]

A. Some unusual condition.

Q. Yes, that is what I mean. And I believe you have, or have you, stated that, in your opinion, did this exertion that has been testified to directly cause or contribute to the death of Ralph H. Garrett?

(Testimony of D. Wilson McKinlay.)

A. In my opinion, the history as given could very definitely indicate the added strain that would be necessary to produce the coronary.

Q. In your opinion, Dr. McKinlay, would driving an automobile for two or three miles have caused the condition that you found later, having in mind the history of the case?

A. Would driving a car two or three miles be sufficient strain?

Q. Yes?

A. To produce a coronary occlusion?

Q. Yes?

A. Not if it is ordinary driving. If something unusual happened while driving, it could be, a sudden fright or sudden physical exertion.

Q. In other words, it would take something out of the usual routine to bring that condition on suddenly?

A. That is definitely my opinion, surely. Driving a car is not difficult where a person knows how.

Mr. Raftis: You may examine, Mr. Hamblen.

Cross Examination

Q. (By Mr. Hamblen): Dr. McKinlay, you filled out the medical certification in the death certificate, which is Exhibit 3, didn't you?

A. Yes, I did.

Q. And filled it out, of course, on the basis of the information which you had?

A. Plus the autopsy.

(Testimony of D. Wilson McKinlay.)

Q. Plus the autopsy. And you participated in that with Dr. Christianson?

A. That's right.

Q. And you had no information from which you could fill in anything under Paragraph No. 20a, which leaves a blank for specifying an accident?

A. That is correct, I had no information at the time by which I could fill that in.

Q. You had no history or information given to you by either of the Garets?

A. No, I didn't.

Q. Of any accident. And neither did you fill in Blank 21f with reference to how did injury occur?

A. That's right.

Q. You had no information?

A. I had no information of the material brought out today. [110]

Q. The only history you had was the bare history you testified to, that he was lifting wheat sacks, that was all they had an opportunity to tell you?

A. They didn't even tell lifting, just said unloading wheat sacks.

Q. Unloading wheat. This arteriosclerosis which you found there, from your diagnosis and from the postmortem, was an advanced type, was it not?

A. Yes, it was.

Q. And, as you have testified, one of the coronary arteries was already closed?

A. That's right.

Q. Are there two arteries, two coronary art-

(Testimony of D. Wilson McKinlay.)

eries? A. There are several.

Q. Several? A. Yes.

Q. Do I understand that only one remained open?

A. Well, there are three main coronaries, and then each of them subdivides, and it was one of the main branches, the anterior descending circumflex, I believe, is the one that Dr. Christian described the one that had closed this time.

Q. I see. But the one that was feeding blood to the heart apparently was two-thirds closed?

A. No, this particular vessel, this branch, this one that [111] plugged off, is the one he described. Because, naturally, that is the place where he made his cross-section, through this thrombus, and that was the one he describes the diameter.

Q. Now, do I understand that thrombus forms, thrombus is a blood clot, isn't it?

A. Blood clot, that's right.

Q. A clot of some kind?

A. It is a blood clot always.

Q. And that forms, in the case of a person suffering from arteriosclerosis, because the artery is too narrow and, as a result of being too narrow, sometimes—did you refer to it as anoxia?

A. Anoxia, lack of oxygen of the heart.

Q. And the blood coagulates at that point, is that right? A. That's right.

Q. Forming a clot? A. That's right.

Q. So that the thrombus forms in part, at least, because the artery is too narrow, isn't that right?

(Testimony of D. Wilson McKinlay.)

A. Because it is too narrow and diseased.

Q. Too narrow and diseased?

A. Yes, the previous disease which has produced the narrowing produces a weakened artery.

Q. And the thrombus may form, under advanced arteriosclerotic [112] conditions, without any outside exertion of any kind, may it not?

A. Yes, sir.

Q. Just by reason of the fact that the artery is too narrow?

A. It does occasionally occur that way.

Q. And, as a matter of fact, people die of coronary occlusion or thrombosis as a result of excitement?

A. That's right.

Q. Or just bending over or climbing steps?

A. Those are all extra exertion, yes, that's right.

Q. Well, they even die in their sleep, don't they, from coronary?

A. Yes, they do in advanced disease of coronary.

Q. From no apparent reason whatsoever?

A. You mean no outside known cause?

Q. That's right.

A. Apparently is right. There may be causes that we are not aware of, such as a bad nightmare or something.

Q. At least in this case, we can say, can't we, Doctor, that this man had an artery which was very severely damaged by reason of this development of arteriosclerosis over a period of years?

A. A period of time; we don't know how fast it forms.

(Testimony of D. Wilson McKinlay.)

Q. A period of time. And we can also say that the [113] thrombus which formed, the new thrombus which you referred to in your testimony, was caused, at least in part, by virtue of this narrow artery, as you have just testified?

A. That's right.

Q. It wouldn't have happened, in other words, the thrombus wouldn't have formed there, if the artery hadn't been restricted, would it?

A. That is correct.

Q. As I gather from your testimony, you are of the opinion that this exertion which has been testified to in unloading wheat was also a, I think you used the word, precipitating cause?

A. Which exertion was that?

Q. The unloading of wheat.

A. You mean dragging the sacks?

Q. Well, let's refer to the whole process, first, dragging the sacks and reaching out and holding the sack.

A. Well, dragging the sacks, I don't think would be a precipitating factor, Mr. Hamblen, because he was apparently working along slowly at the rate at which he could work. I say that because he had no pain. If we assume that that type of exertion was going to cause damage, then he would have been having what we call angina pectoris, he would have been having heart pain [114] from exertion or effort pain, which would stop when he would stop exerting himself.

Q. Well, you are assuming he didn't have

(Testimony of D. Wilson McKinlay.)

pain—— A. That's right.

Q. ——prior to the time. And, as a matter of fact, I gather from your testimony, you have had some experience with wheat sacks?

A. Oh, yes.

Q. And it takes just as much exertion to lift a sack up on end like this (indicating), doesn't it, as to reach over and hold a sack at an angle of 45 degrees?

A. Well, that all depends on how you are doing it, Mr. Hamblen.

Q. It all depends, doesn't it?

A. According to the story of the boy, there would be a tremendous amount of exertion more for me to suddenly reach out supporting myself on the side of the house and grabbing a sack and holding it in an awkward, strained position, would cause a great deal more effort than slowly to lift a wheat sack up.

Q. That would just be your personal opinion, wouldn't it?

A. I think that is common sense.

Q. You think it would take more effort physically to reach out and hold a wheat sack in a stationary position than it would to lift it up from the ground to a vertical [115] position?

A. I didn't understand——

Q. With all that weight?

A. I don't know as I am supposed to build on this subject or not.

Q. Probably that is neither here nor there.

(Testimony of D. Wilson McKinlay.)

A. It is my opinion he certainly would have worked much harder grabbing that grain because of the emotional factor forcing the heart to go faster because something out of the ordinary was occurring.

Q. Well, let's put it this way: In the condition which you found at the postmortem of an artery two-thirds closed and another artery entirely closed off, the exertion which a man might undergo in dragging nine or ten wheat sacks and raising them up, the 140 pounds alone, would be enough to cause a thrombosis to form, would it not?

A. Not necessarily at all.

Q. Not necessarily, but it could be, couldn't it?

A. It depends on the speed with which he is working.

Q. That's right. And if kept on doing that with sack after sack, he would develop a fatigue, which itself could be enough to cause a thrombosis under those conditions, isn't that right?

A. Well, you are building up something that wasn't [116] presented in the testimony.

Q. I know I am. I am asking you.

A. In that particular case, certainly, a man could produce enough exertion getting up on his feet and sitting down and waving his arms and sitting down and waving his arms to produce a heart embarrassment if he had a coronary.

Q. The point I am getting at, you can't say that that thrombus wouldn't have formed, in whole or in part, from the exertion which Mr. Garrett went

(Testimony of D. Wilson McKinlay.)

through in dragging and lifting those nine wheat sacks, entirely apart from the matter of holding the final sack in position, can you?

A. No, I can't.

Q. You can't say that?

A. No. God is the only one who could answer that question, I'm afraid, but from our understanding in medicine, the man who is walking along hunting gets along all right; then he picks up his buck and he has his coronary. We assume that picking up the buck was his mistake. Possibly, going hunting was a mistake, too, but at least he was getting by.

Q. Your luck was as good as mine, apparently.

A. I stayed home.

Q. Doctor, in any event, if a thrombus formed during this [117] process of moving wheat sacks at any point along the line, it wasn't a complete closure thrombus, was it, at that time?

A. It never closes immediately, that's right, the thrombus builds. Your pain occurs as the thrombus starts, as a rule. The thing is just like putting a rubber band around your finger; the moment you put it on there it hurts; you leave it on, then the pain gets worse. It is the same thing.

Q. That's right, but the clot isn't entirely formed at that time, is it?

A. Oh, no, the clot, as far as being formed, it takes sometimes 48 hours to be formed completely. This was a soft clot even when found.

Q. And there may be additional events occur-

(Testimony of D. Wilson McKinlay.)

ring after the initial event which will cause the thrombus to build more rapidly?

A. Well, the pain itself is one of the chief things that does that. That is the reason we try to relieve it.

Q. Well, in any event now, getting back to my previous question, as you stated, the thrombus was formed as a result of the narrow, diseased condition of these arteries, precipitated, apparently, in your opinion, by exertion?

A. That's right. [118]

Q. However that exertion may have occurred?

A. That's right.

Q. So without the condition in the artery, the thrombus wouldn't have been there?

A. That's right.

Q. In your opinion, without the other, it wouldn't have been there, this new thrombus?

A. That's right.

Q. The underlying, basic factor in the situation was the artery's sclerotic condition?

A. That's right.

Q. That was, you might say, the primary cause of the forming of the thrombus?

A. That's right.

Q. If that is a correct word to use.

A. Well, it is the underlying cause.

Q. The underlying cause?

A. That's right.

Q. And the other is simply a contributing factor, that is, the exertion?

A. That's right.

(Testimony of D. Wilson McKinlay.)

Q. Isn't that right?

A. That is what I would say.

Q. So that you can't say that the thrombus was the result solely of the exertion, can you? [119]

A. The thrombus was produced by exertion in a previously damaged heart, is what I said in the first place.

Q. In conjunction with the previously damaged coronary arteries, isn't that right?

A. Yes, I have stated that several times, Mr. Hamblen, that without the heart's arteries having been diseased, it would not have occurred. Of course, on the contrary, if the extra exertion had not occurred, the damaged arteries would have continued supplying the heart for normal activity.

Q. Yes, he might have lived, as you say, an indefinite period? A. That's right.

Q. Might have been hours?

A. Days, weeks, years.

Q. Days, weeks, or months?

A. I have one man who has been ten years now since he had a coronary.

Q. That all depends on the extent of the damage in there, doesn't it?

A. It depends on that and the progress of the disease, factors we don't know about, even maybe cigarettes.

Mr. Hamblen: I think that is all.

The Court: Any other questions?

Mr. Raftis: No further questions. [120]

(Testimony of D. Wilson McKinlay.)

The Court: That is all, then. The doctor may be excused, then?

Mr. Raftis: I think he is going to wait just a few moments.

The Court: Yes.

Mr. Raftis: The other doctor's deposition has to be read yet, I wanted the doctor to hear it.

The Court: I see, all right. You can sit right here, if you like.

(Witness excused.)

Mr. Raftis: I just have one short witness. Mrs. Noah, will you come forward, please?

LIZZIE NOAH

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

Direct Examination

Q. (By Mr. Raftis): Will you state your name, please, for the record?

A. Mrs. Lizzie Noah.

Q. And where do you live, Mrs. Noah?

A. In Colville.

Q. And what relationship do you bear to Ralph H. Garrett, now deceased?

A. His mother. [121]

Q. And I will ask you if on September 24, 1953, you had occasion to be at the home of Mr. and Mrs. Ralph H. Garrett?

A. Yes, sir.

Q. Where is that home situated?

A. How?

(Testimony of Lizzie Noah.)

Q. Where is their home? Where was their home then?

A. Well, it is about nine miles—I don't know just which direction, I can't say, but it is nine miles out of Colville.

Q. Yes. What type of home is it?

A. Well, it is a nice house.

Q. That is a farm home?

A. Yes, just a nice farm home.

Q. And were you there when Mr. Garrett came home from Colville on the 24th of September, 1953?

A. Yes, sir.

Q. And will you tell the Court what he brought with him on that trip? A. Some wheat.

Q. And did you observe how it was loaded, in what kind of a conveyance?

A. Well, I can't just exactly say, but some of them was standing and some was lying down.

Q. Was it a truck? [122] A. Yes.

Q. That is what I wanted to know. Were you present at any time while Mr. Garrett was unloading the wheat?

A. Well, I saw him through the window.

Q. And did you observe how he was doing it?

A. Yes, I did.

Q. Just describe, will you, to the Court what he did?

A. He was pulling them toward the end gate where it was opened and——

Q. Who was helping him?

A. His son.

(Testimony of Lizzie Noah.)

Q. And did you observe Mr. Garrett, your son, lifting any wheat sacks off?

A. Well, they were pulling it out of the wagon.

Q. Just pulling it? A. Yes.

Q. And while he was engaged in that work, did you notice anything unusual occur?

A. Yes, I seen him lean over and then all of a sudden he straightened up and put his hand in his stomach, and that made me say to his wife, "We better help unload the wheat."

Q. Did you go out then?

A. And we did.

Q. And then will you describe what condition you found [123] your son in when you went out there?

A. Well, he was leaning up against the truck and unable to do any more.

Q. Did you observe his color?

A. Yes, it was kind of pale looking. He was real pale.

Q. And did he do any further work after you observed him?

A. He did not. He wasn't able.

Q. Did he go to the house?

A. Yes, he did, he went to the house.

Q. And did you observe whether he had his meal that evening?

A. Not that I know of, he didn't to home.

Q. He didn't have anything there?

A. He didn't care for any.

Q. Did that condition of pain and distress con-

(Testimony of Lizzie Noah.)

tinue until he left? A. Yes, it did.

Q. And were you there when he and his wife left? A. Yes, sir, I was.

Q. Where did they go?

A. Well, they went to Spokane.

Q. What did they drive, what vehicle?

A. They drove the truck.

Q. Do you recall who was driving?

A. She did. [124]

Q. That is, Mrs. Garrett? A. Yes, sir.

Mr. Raftis: I believe that is all.

Cross Examination

Q. (By Mr. Hamblen): Mrs. Noah, when you looked out the window and saw your son put his hand on his stomach, you thought there was something wrong with him, did you?

A. Yes, I did, I realized there was.

Q. You knew he had been in ill health, did you?

A. No, I hadn't known it, hadn't nobody told me anything about it. That was news to me.

Q. I see.

Mr. Hamblen: That is all.

Mr. Raftis: That is all, Mrs. Noah.

(Witness excused.)

That is our case, your Honor.

(Plaintiff Rests.)

Mr. Hamblen: If the Court please, may we reserve our motion until the close of the case?

The Court: Yes, I think that would be a wise thing to do. [125]

Mr. Hamblen: Save a little time.

Then I would like first, in presenting defendant's case, to have published the deposition of Dr. Lowell.

The Court: All right. Are you willing to stipulate that this deposition be read?

Mr. Raftis: Yes.

The Court: I don't believe it quite meets the requirements. Colville isn't 100 miles from Spokane, is it? How far is it from here to Colville?

Mr. Raftis: It is 80 miles.

Mr. Hamblen: It was taken under stipulation which is attached to the deposition, your Honor.

The Court: I am not questioning the regularity of taking it, but Rule 26 of the Rules of Civil Procedure provides that, unless it is a deposition of a party, it may not be used unless the witness is dead or more than 100 miles from the place of trial, unless you gentlemen stipulate. If you wish to stipulate, of course, that may be done.

Mr. Hamblen: Well, I understood we had so stipulated.

Mr. Raftis: Well, I might say Dr. Lowell remonstrated about leaving his work and coming here, and I told Mr. Hamblen it would be agreeable to take his deposition.

The Court: Oh, I haven't the slightest objection to [126] it; I just want to raise the point and be sure you know what you are doing here.

Mr. Raftis: Yes, I wouldn't want to take advantage of the rule.

The Court: No, I have no objection at all.

The record may show, then, that counsel has

stipulated that the deposition may be read and considered as part of the evidence in the case; is that right?

Mr. Hamblen: Yes, all right.

Mr. Raftis: That is all right with us, your Honor.

The Court: All right, go ahead.

Mr. Raftis: Is it agreeable with your Honor that I sit in the chair?

The Court: Yes, I think that is a good way of doing it.

(Whereupon, the said deposition was read into the record, Mr. Hamblen reading the question, Mr. Raftis the answers, as follows:)

Mr. Hamblen: The deposition shows that Dr. Roy S. Lowell was first duly sworn to tell the truth, the whole truth, and nothing but the truth, and testified as follows:

‘Examination by Mr. Hamblen:

Q. Your name is Dr. Roy S. Lowell?

A. Yes, sir. [127]

Q. You reside in Colville, Washington?

A. That’s right.

Q. Doctor, you knew Mr. Ralph H. Garrett during his lifetime? A. Yes, sir.

Q. And I believe you treated him at various times, or at least saw him in your office professionally at various times from August, 1948, down to September, 1953? A. That’s right.

Q. Would it be fair to say, Doctor, that you were his family physician? A. I think so.

(Deposition of Dr. Roy S. Lowell.)

Q. In that period of time, you treated him for various conditions, such as peptic ulcer, unguinal hernia, appendicitis, hepatitis, and a few other things?

A. Yes.

Q. On September 5, 1953, do your records show that he called at your office in Colville?

A. Yes, sir.

Q. And at that time, did he complain that he thought there was something wrong with his heart?

“Mr. Raftis: Objected to as being incompetent, [128] irrelevant and immaterial.”

And I won't press that at this time, your Honor.

The Court: All right.

“A. On the 31st day of August, he was in the office and he had complained of a chest pain because of the jaundice that he had. At that time, he also mentioned that he had had a little chest pain on exertion. No cardiogram was done at that time. He was given nitroglycerin.

Q. That was August, 1953?”

The Court: What is hepatitis? Is that jaundice?

Mr. Hamblen: Well, jaundice is associated with it. It is a kidney disease that goes along with jaundice, I believe.

I'm sorry.

The Court: Have you gentlemen any objection to my inquiring, just for my own information?

Mr. Hamblen: I said kidney, I meant liver.

Dr. McKinlay: Hepatitis is inflammation of the liver.

The Court: I see. All right, go ahead.

(Deposition of Dr. Roy S. Lowell.)

“A. That was the last of August, 31st.

Q. 1953? I just want to get the year.

A. Yes. [129]

Q. At that time, did you construe this chest discomfort as a heart condition?

A. I hadn't taken a cardiogram. I merely observed that he complained of pain on exertion, gave him some nitroglycerin, which more or less proves the presence or absence of angina, and told him to report back.

Q. Did he report back?

A. I don't think he said too much about his heart that day. We were concerned chiefly with his jaundice.

Q. Doctor, you asked him to come back in a few days?

A. He came back on the 5th of September.

Q. 1953? A. Yes, sir.

Q. What did he complain of at that time?

A. He stated that the nitroglycerin had relieved the pain somewhat. A cardiogram was taken and showed definite evidence of coronary artery disease. Accordingly, he was advised prolonged rest, absolute rest, and to sell his farm.

Q. In other words, on September 5, 1953, you did make a definite diagnosis of coronary artery [130] disease? A. Yes, sir.

Q. And instructed him to cease all work and to sell his farm? A. That's right.

Q. Did he come back again in September of that year?

(Deposition of Dr. Roy S. Lowell.)

A. He came back the next time on the 24th of September.

Q. And what was his complaint, if anything, at that time?

A. He was continuing to have pericardial chest pain on exertion. I believe he mentioned continuing to do some work around the farm. He felt that because he had some gas accompanying the pain, that it was his stomach that primarily was the cause of his pain and in his heart. He felt that way himself. I advised him that this was very unlikely, but because of the uncertainty in his own mind, which I wanted to get rid of, I advised him to have stomach x-rays to put his mind at rest in regard to his stomach. Since our radiologist was not to be back in Colville for a matter of about a week, he was sent to Spokane [131] for these x-rays.

Q. Do I understand that on September 24th, your prior diagnosis as to his heart condition was still the same?

A. Oh, yes, it didn't change.

Q. What time of day on the 24th?

A. I cannot tell you.

Q. You can't. That is the last you saw of him?

A. Yes, I believe so.

Mr. Hamblen: I think that's all.

Cross Examination

Q. (By Mr. Raftis): Dr. Lowell, the history of Mr. Garrett which has been indicated reveals that he had considerable trouble with his stomach and the

(Deposition of Dr. Roy S. Lowell.)

region of his bowels for some years, does it not?

A. Mr. Garrett had lots of complaints, believe me, some of which were borne out by examinations and some of which were not. Mr. Garrett was definitely on the functional side, but in addition to having plenty of other troubles. I will have to go back to my records to see whether they actually show an ulcer. I don't think they did. I am not sure. In 1950, I have [132] here an ulcer history, but that doesn't mean he actually had an ulcer. It doesn't definitely indicate the presence of an ulcer; you have to see it on x-ray.

Q. Did he complain of ulcer trouble?

A. He believed right along through the years that he had an ulcer.

Q. The records show that he was operated on for appendicitis. Do you recall when that was?

A. I would have to look it up. He has an extensive history. He had an inguinal hernia operation in December, 1948. I talked him out of having his appendix operated on many times. He was just functional enough, and we operate and find a nice quiet appendix, well, we don't like to do unnecessary surgery.

Q. My point was, he did make considerable complaint about stomach functional disorder?

A. Yes, he did. Very much so.

Q. According to your records, the first indication of positive heart trouble was in September, 1953, as I recall?

A. I believe we took out the appendix when I

(Deposition of Dr. Roy S. Lowell.)

fixed his hernia. We thought we probably wouldn't find much in the way of appendix, [133] and I think we took out the appendix as an adjunct to the hernia. I have no entry for the appendix, so it must have been done at that time. It is a long time ago.

Q. Does your record show any evidence of heart condition prior to August, 1953?

A. No.

Q. And did it show considerable functional disorder of the general stomach area, such as you have indicated—hernia, appendix, ulcer?

A. We never proved an ulcer at any time.

Q. I mean complaints of it?

A. That was his general complaint. He complained of a certain amount of pain in the upper stomach area, gas.

Q. Would that be associated generally with hernia or an ulcer or stomach trouble, this gas condition?

A. It could or could not.

Q. It wouldn't be uncommon to be associated with them?

A. Well, typically, gas is not often a complaint registered by people with ulcers, typically. As you know, people can complain of most any kind of a symptom with any disease, but [134] typically gas is not usually too common with an ulcer.

Q. As far as Mr. Garrett is concerned, in his own mind he, at least, felt, and so told you, that he thought he had a stomach condition?

A. That's right.

Q. That is the reason you advised him to go to

(Deposition of Dr. Roy S. Lowell.)

Spokane to see a specialist and to determine what, if any, condition existed as to his stomach?

A. That's right.

Q. Do you recall who he was to see?

A. He was to see Dr. Galloway.

Q. There is no recollection on your part when Mr. Garrett came on September 25th before he went to Spokane?

A. There is nothing on the card.

Q. You have no recollection that he did?

A. No. I do recall that his wife came to see me. I couldn't tell you the date it was. She was quite perturbed that Ralph had not done as I instructed him to do, and wondered what she could do about it. I can't tell you the date, I haven't it written down.

Q. Did you definitely determine the type of [135] coronary artery condition that you mentioned awhile ago?

A. It is a coronary heart disease.

Q. That, I take it, is damage or deterioration of the artery leading into the heart, is that correct?

A. No.

Q. I am not a medical man, please define it a little more.

A. It is a cutting off of the circulation of one of the arteries that nourish the heart muscle.

Q. Would that be sometimes called coronary deficiency?

A. A coronary insufficiency is where the coronary muscle is not receiving an adequate amount of

(Deposition of Dr. Roy S. Lowell.)

blood supply, but it is not an occlusion. Any time the blood supply in the coronary vessel is not adequate, you cannot call it an insufficiency. Coronary insufficiency is a broad term.

Q. One other question, Doctor. Assuming that the evidence shows that on September 25, 1953, Ralph H. Garrett was unloading sacks of wheat at his farm on the evening of that day, and that these sacks weighed approximately 140 pounds each; assuming further that while engaged in loading these sacks of wheat he exerted himself rather severely and immediately thereafter severe pain developed in his chest which persisted and he died the following morning on his way to Spokane——

A. I believe he was in Spokane at the time.

Q. ——in your opinion would this heart seizure and resultant death probably have been caused by the strain which he suffered in unloading this wheat?

A. I think you could say it could have aggravated his present existing condition. You couldn't definitely say it caused his death, no. It would have aggravated it, no doubt, yes. We have had these heart cases from time to time, and one of the things that you prescribe to your patient is not to exert himself unduly.

Q. Why do you do that?

A. For example, when you have coronary artery disease, and go to a football or athletic event and he dies, and the excitement of the athletic event you might say is a factor in his death. That happens

(Deposition of Dr. Roy S. Lowell.)

quite often. Whether you could say that this man—you could just [137] as logically say that the excitement of going to Spokane on the trip led to his demise as you may say that the loading of the wheat sacks caused it. I think as far as you can go is to say that it contributed partly to his death. I don't think you could definitely say that is what did it.

Q. You could say there would be a causal connection between that and his death?

A. Possibly.

Q. Would you say probably?

A. I would say possibly.

Q. Do you know how much Mr. Garrett weighed?

A. Oh, I imagine—I don't know what his weight was, but I would recall it would be around 130 to 135. That would be as near as I could guess.

Q. There is some testimony that it is considerably less.

A. It might have been. I can't say definitely.

Q. The point I am making is he was unloading wheat sacks weighing 140 pounds, which were in excess of his own weight. Assuming that one of these sacks of wheat got away from him and he grabbed it and pulled it back to prevent it [138] falling off the truck, and immediately thereafter had to stop his work and suffered a severe pain in his chest, would you say that that pain was probably caused by that sudden exertion and strain?

A. Yes.

Q. And if that pain persisted from then on until

(Deposition of Dr. Roy S. Lowell.)

he died the following morning, would one say that it was a causal connection between that event and his death and that it probably brought on his death?

A. I couldn't say that, because he had had lots of pain for the last three weeks before that. He had many attacks of pain. Any exertion would bring on the pain, so, as I say again, I can't say it was that particular event or any other particular event that actually did it. It certainly contributed to it, but—

Q. Assuming the record shows no other event which would bring on any noticeable pain, would you still answer the same?

A. He came in to see me with pain, any time he exerted at all, walking up stairs, lifting wheat sacks, or going to Spokane. If you are going—which you probably can't do—but [139] if you are going to try to get definitely what brought it out, well, the trip to Spokane immediately preceding his death could have caused it; you could almost say it might have been. Or you can say the lifting of the wheat sacks certainly didn't help his condition any, and undoubtedly was a contributing factor, but you cannot say definitely that it was the lifting of the sacks that caused his death. I don't think you can, because if that were the case, why didn't he die the night before?

Q. Well, do heart patients always die immediately upon suffering a severe heart injury?

A. It all depends on what caused the death. A man has a coronary thrombosis and he gets over

(Deposition of Dr. Roy S. Lowell.)

the initial attack of pain and stays in the hospital for some time and is sent home, and because of that heart attack, he throws a blood clot off to his lungs and immediately dies. That is a different cause of death than from the coronary itself. That happens quite often.

Q. No postmortem was done, was it?

A. Not that I know of. So we cannot definitely say that he died of the coronary. We can say [140] that he died indirectly from the effects of the coronary, but the immediate cause of death is undetermined. He might have died of a blood clot that his heart threw off to his lungs. We don't know.

Q. But you do know that he did this heavy lifting?
A. Yes, we knew that he did that.

Q. And it brought on severe pain?

A. Yes. He died within 24 hours after that. This is not my statement—

Q. This is assumption?

A. This is assuming he lifted the wheat sacks. I can't tell you that. It is all assuming.

Q. Yes.

A. My impression was that he had been doing lots of it prior to this time that he shouldn't have been doing.

Q. He might have been lifting wheat sacks every day, but you don't know?

A. I don't know.

Mr. Raftis: That's all.

(Deposition of Dr. Roy S. Lowell.)

Redirect Examination

Q. (By Mr. Hamblen): As I understand it, Dr. Lowell, his wife also [141] knew that you had instructed Mr. Garrett not to engage in any work?

A. Definitely.

Q. And apparently she was perturbed and during the month of September came into your office?

A. Yes. The date, I haven't any idea.

Q. It was prior to the last time that he came in?

A. Yes.

Q. And asked you whether there was some way you could help her in getting him to cease his heavy work? Is that the purpose of her visit, in general?

A. I think essentially, yes.

Q. She was generally perturbed?

A. Yes.

Q. As I understand it, Doctor, in answer to Mr. Raftis' questions, you are of the opinion, assuming the facts as he gave them to you, that the lifting of the wheat was not the cause of death? It may have aggravated his heart condition, but in your opinion it was not the cause of death, or, at least—

A. I couldn't state definitely. I can say I don't know. It certainly probably contributed [142] to it. Whether it was the definite cause of death or not, I don't know. It might have been caused by excitement.

Q. It might have been caused by any number of things?

A. That's right.

(Deposition of Dr. Roy S. Lowell.)

Q. You do know from your examination of him in the latter part of August and in the early part of September, 1953, that he had a coronary heart condition? A. Yes.

Q. Let me ask you this, Doctor: Assuming that postmortem was done on Mr. Garrett, and that the certificate of death showed under the medical certificate that the direct leading cause of death was coronary occlusion, and the antecedent causes were arteriosclerosis, assuming that is the medical certificate, would that fit in with your diagnosis as you saw him?

A. That is a clinical diagnosis.

Q. It is exactly the same thing? A. Oh, yes.

Q. On that basis, it would appear, Doctor, would it not, that the cause of death was the coronary condition as you have stated? [143]

A. I would say that it was either that directly or indirectly.

Q. Would that be a major factor?

A. Yes, that was the major factor. The fact that he could have thrown an embolus because of his coronary could have happened. Many people die that way.

Q. I think on your cross examination you used the word 'contributed.' There may have been other contributing factors, but the coronary condition was the major cause of death; wouldn't you say that?

A. Yes, sir.

Q. And if lifting wheat or any other strenuous exercise would, in fact, affect Mr. Garrett adversely,

(Deposition of Dr. Roy S. Lowell.)

isn't it a fact that such conduct on his part was contrary to your directions and instructions to him as his family physician?

Mr. Raftis: Objected to as immaterial, irrelevant and incompetent.

A. Yes, sir. He did those thing contrary to my advice.

Q. Contrary to your advice?

A. Yes. [144]

Q. Isn't it a fact that your advice in that respect was based on the fact that his heart disease, as you found it, would not permit him to do those things with safety? A. That's right.

Recross Examination

Q. (By Mr. Raftis): In other words, the reason you advised him not to lift is because you felt that it would result in fatal consequences?

A. That's right.

Q. Did you examine or see Mr. Garrett after his death? A. No, sir.

Q. Did you make up the death certificate?

A. I don't think so because he was taken care of by some doctor in Spokane.

Q. So you have no way of knowing what the actual conditions were that brought about his immediate death? A. No, I haven't.

Mr. Raftis: That is all."

Mr. Hamblen: Defendant rests, your Honor.

(Defendant Rests.) [145]

Mr. Raftis: May I have just a minute to talk to Dr. McKinlay?

The Court: Yes, you may do that. I will take a recess for ten minutes.

Mr. Hamblen: If the Court please, excuse me, I had a memorandum of authorities ran out during the noon hour.

The Court: Yes, all right, if you will hand a copy to counsel.

Mr. Hamblen: I will hand counsel a copy here.

The Court: I will look at it.

Mr. Hamblen: It might be helpful preceding the argument.

The Court: Let me know when you are ready.

(Whereupon, a short recess was taken.)

Mr. Raftis: Will you take the stand, Doctor?

D. WILSON MCKINLAY

recalled as a witness in rebuttal, having been previously sworn, testified further as follows:

Direct Examination

Q. (By Mr. Raftis): Dr. McKinlay, you have previously testified on direct examination. I will ask you if you were present and heard read in open court the deposition of Dr. Roy S. [146] Lowell?

A. Yes, I did.

Q. Dr. McKinlay, I will call your attention to the testimony of Dr. Lowell on Page 2 thereof, in answer to a question of what did he complain of at the time, and he made this answer:

“He stated that the nitroglycerin had relieved the

(Testimony of D. Wilson McKinlay.)

pain somewhat. A cardiogram was taken and showed definite evidence of coronary artery disease.”

I will ask you to state, in your opinion, Doctor, would it be possible to determine the presence and extent of coronary artery disease through a cardiogram only? A. No, sir.

Q. Will you explain your answer?

A. An electrocardiogram is a tracing produced by infinitesimal currents of electricity generated by the heart muscle as it contracts, which is transmitted through delicate instruments and transcribed on a moving tape, and all that can be read from an electrocardiogram is the condition of the heart muscle, indicating whether or not there has been damage to the heart muscle in the past at any time prior to the tracing.

Unfortunately, there is no way known, by [147] electrocardiogram or other means, of determining the condition of a man's coronaries before he has a coronary attack or before death. I wish we had it. I would like to know the condition of mine.

Q. Did you have occasion, Dr. McKinlay, to call Dr. Lowell after the death of Mr. Garrett?

A. Yes, I did, made it my business to do so immediately after his death.

Q. And did you report the fact of Mr. Garrett's death? A. Yes, I did.

Q. And will you relate to the Court the remark or answer that Dr. Lowell made at the time you called him with respect to his death?

Mr. Hamblen: Just a minute.

(Testimony of D. Wilson McKinlay.)

The Court: Just a moment.

Mr. Hamblen: I would like to object to that as hearsay.

Mr. Raftis: Well, he was talking to Dr. Lowell. This is by way of rebuttal to the doctor's statement that he definitely knew——

The Court: I doubt that it would be admissible unless a foundation has been laid for it by way of impeachment, and of course, that can't be done here because the the other doctor is testifying by deposition.

Mr. Raftis: Yes, we had no opportunity to [148] anticipate that.

The Court: Yes, I understand that, but I think perhaps I should sustain the objection. You do object, I understand?

Mr. Hamblen: Yes, I do, your Honor.

The Court: Under the circumstances here.

Mr. Raftis: I see. We are up against it, we can't control that, your Honor.

Q. Dr. McKinlay, Dr. Lowell has stated generally that he—if I can find his answer here.

Question, on Page 10:

“As I understand it, Doctor, in answer to Mr. Raftis' questions, you are of the opinion, assuming the facts as he gave them to you, that the lifting of the wheat was not the cause of death. It may have aggravated his heart condition, but in your opinion it was not the cause of death?”

And he answered:

“I couldn't state definitely. I can say I don't

(Testimony of D. Wilson McKinlay.)

know. It certainly probably contributed to it. Whether it was the definite cause of death or not, I don't know. It might have been caused by excitement."

I will ask you, Doctor, in your opinion, from the [149] history of this case, if you think, assuming the facts are all true as you now have them, that the death of Ralph H. Garrett was in any way caused by excitement?

A. I haven't heard anything testified to that would indicate there was any excitement.

Q. And based on the history of the case?

A. Based on the history.

Q. I will ask you one other question. In the light of the history of the case and the testimony of Dr. Lowell, the testimony of Ralph Garrett, Jr., I will ask you if, in your opinion, the death of Ralph H. Garrett was caused exclusively and solely by the exertion suffered by him on September 24, 1953?

Mr. Hamblen: Objected to as repetition. We have gone all through that on direct.

Mr. Raftis: I don't believe I asked that question.

The Court: Well, I will overrule the objection; he may answer it. I am not sure whether it has been covered.

Mr. Raftis: I'm not sure, but I want to be sure that it is asked.

A. I think that the accident or the strain of the exertion certainly precipitated the chain of events that produced his death.

(Testimony of D. Wilson McKinlay.)

Q. And, in your opinion, was that the sole and exclusive cause that did precipitate it? [150]

A. So far as I have heard, I would say that that was the sole precipitating factor that led to the chain of events we have described before that caused his death.

Mr. Raftis: That is all.

Cross Examination

Q. (By Mr. Hamblen): But, Doctor, you also testified previously that it wasn't the sole cause of his death, didn't you?

A. Mr. Hamblen—I can think of some other ways of stating this.

I told you in answer to your questions, I have answered Mr. Raftis, that this man had a chance to live beyond that period of time according to the condition of his heart, but he didn't live beyond that time. Therefore, from a medical standpoint, we would have to say that the trauma that produced that blood clot produced his death.

Now, the other factors in regard to the underlying causes, the defects in the arteries, I assume, made him a heart cripple.

Q. You aren't reversing your previous testimony? A. Not in the least.

Q. The narrow condition of the artery caused the thrombus, are you? [151]

A. I didn't say that that caused the thrombus, sir; I said that the fact that we had a crippled heart—I will put it in different words, maybe, and

(Testimony of D. Wilson McKinlay.)

not so medical—a crippled heart that could only stand a certain amount of strain, and when it had an unusual strain placed upon it, it couldn't carry that amount. Therefore, it produced the anoxia sufficient to produce the thrombus.

Q. And didn't you——

A. In the statement here from Dr. Lowell, he said that the man did have some relief from the nitroglycerin, right? indicating that he did have some anginal type of pain preceding this, which would mean that with slight exertion beyond what his heart muscle liked, he would have a kick-back with some pain. Then he would stop exerting himself or swallow nitroglycerin pill, and the pain would subside because the heart muscle was not deprived of oxygen sufficiently to produce damage such as a thrombus.

Q. All right. Well, now, I am going to ask you, although it is repetition, if you didn't testify that the two operated in conjunction? That is the word I used on my cross examination of you.

A. I stated that before.

Q. The narrow condition of the coronary artery and the [152] exertion operated in conjunction with each other to create this thrombus? Did you not so testify?

A. Yes, I did, and I am not changing that testimony. I am merely stating that with a damaged heart, the strain was sufficient to produce the thrombus. The narrowing of the artery had nothing to do with producing the thrombus, sir. If I

(Testimony of D. Wilson McKinlay.)

said that, then I certainly misspoke or misunderstood your question. The thrombus was produced by the need for an unusual amount of oxygen in the cardiac muscle. It couldn't get through in sufficient quantity. Therefore, the thrombus was formed because of this anoxia. The narrowed blood vessel did not have anything to do with producing the thrombus.

Q. Well, the thrombus would not have been produced without a narrow blood vessel, though, would it?

A. Well, I would like to put it this way, since you are trying to pin me down:

Suppose you take a normal heart and you subject that normal heart to a sufficient extreme violent effort, you can have heart failure. In London they had a good many of them during the war, some from fear, some from other exertion.

Q. Now I think we understand each other. I used one other word in my cross examination of you, I asked you [153] whether or not the artery's sclerotic condition, the narrow artery, was not the fundamental or primary cause of this man's death and, if I do not remember incorrectly, you answered "yes?"

A. From a medical standpoint, if he had not a coronary, arteriosclerosis, the amount of exertion that he had certainly would not have produced his death.

Mr. Hamblen: That is all.

Mr. Raftis: That is all, Doctor.

The Witness: That is quite a grilling.

(Witness excused.)

Mr. Raftis: I would like to call Mrs. Walsh.

The Court: May the doctor be excused now, Mr.

Raftis?

Mr. Raftis: Yes, your Honor.

The Court: If there is no objection.

Mr. Hamblen: Yes.

The Court: We will let Dr. McKinlay go back to his office.

NOVA GARETT WALSH

plaintiff herein, resumed the stand in rebuttal, testified further as follows: [154]

Direct Examination

Q. (By Mr. Raftis): Mrs. Walsh, you have been previously sworn? A. Right.

Q. And you have heard the deposition of Dr. Lowell which was read before the Court?

A. Right.

Q. In this deposition, on Page 2, Dr. Lowell stated in answer to a question:

“On the 31st day of August he was in the office and he had complained of a chest pain because of the jaundice that he had.”

You heard that testimony?

A. Yes, I heard that.

Q. I will ask you to state, Mrs. Walsh, if your husband, Ralph H. Garrett, ever suffered from jaundice?

(Testimony of Nova Garrett Walsh.)

A. My husband, Ralph H. Garrett, never suffered from jaundice.

Q. Did any other member of your family suffer from jaundice?

A. It seemed that he was confused in his treatment there. His cards in his office have the son and my treatment and had his, and it was my son who had the yellow jaundice.

Q. His name was the same as your husband's?

A. But he listed him as "Garrett boy," but somehow he was confused and started treating them both for jaundice, [155] I guess, for sometime.

The Court: Was that your son and not Mr. Garrett?

A. That was my son who had the jaundice.

The Court: Oh, you mean the one who testified?

A. Right.

Q. (By Mr. Raftis): But your husband never had had jaundice? A. Yes.

Q. I believe you said, Mrs. Walsh, that the only time you were in the office after this heart condition came up was the time he took the cardiogram on September 5, 1953?

A. That's right, I think that is the last time I was in.

Q. Was your husband complaining of chest pain at that particular visit?

A. No, abdominal.

The Court: I didn't get that last question.

(The question and answer were read.)

(Testimony of Nova Garrett Walsh.)

Q. (By Mr. Raftis): On Page 9, Mr. Hamblen asked Dr. Lowell:

“Q. As I understand it, Dr. Lowell, his wife also knew that you had instructed Mr. Garrett not to engage in any work?

“A. Definitely.

“Q. And apparently she was perturbed and [156] during the month of September came into your office?

“A. Yes. The date, I haven't any idea.”

Now, outside of the date that you were there when the cardiogram was taken, did you ever go back to Dr. Lowell's office and discuss this condition prior to your husband's death?

A. Never did.

Q. When did you go back after the date of that cardiogram?

A. I went back to Dr. Lowell after my husband died.

Q. And did you then tell him what had happened?

A. I did. He knew it, he had been called by the doctor, Dr. McKinlay had called him.

May I tell you what he said?

Q. What did Dr. Lowell tell you then with reference to this condition?

Mr. Hamblen: Objected to for the same reason in connection with Dr. McKinlay's testimony. Hearsay.

Mr. Raftis: Well, of course, we are a little bit at a disadvantage here.

(Testimony of Nova Garrett Walsh.)

The Court: Yes, I understand that.

Mr. Raftis: We have waived everything here to get a deposition to the Court, and now we are hamstrung, we can't refute it, apparently.

Mr. Hamblen: Well, now, Mr. Raftis, I want to be [157] fair. You were going to bring Dr. Lowell down here yourself, and we arranged to take his deposition up there for the convenience of him and everybody concerned.

The Court: I think I should sustain the objection here. I don't want to get error in this record.

Mr. Raftis: Well, that's right.

The Court: And I am afraid, unless a foundation for impeachment has been laid, it wouldn't come within any exception to the hearsay rule.

Mr. Raftis: It is just impossible to lay it.

The Court: She may testify in rebuttal to anything he said, so long as she doesn't bring in what the doctor said.

Mr. Raftis: That's right.

The Court: I mean, to rebut anything that the doctor testified.

The Witness: Your Honor, there is a few questions in there that aren't right.

The Court: Well, your counsel can ask you about them, if he has testified to anything of which you have knowledge which you want to deny.

Q. (By Mr. Raftis): You have testified, then, that you did not go back in to see Dr. Lowell until after your husband died? A. That is right.

Q. Now, Mrs. Walsh, Dr. Lowell in his depo-

(Testimony of Nova Garrett Walsh.)

sition states that your husband was functional, I believe he called it, which I believe means more or less complaining, neurotic, imagining that he has trouble. I will ask you to state from 1948 up to 1953, practically the month of the death of your husband, Dr. Lowell actually treated your husband for some condition other than heart?

A. For everything but heart, I should add.

Q. Well, did he prescribe medicines?

A. Yes. I noticed in this deposition he stated he took nitroglycerin; he never did take one.

Q. Did your husband ever take nitroglycerin?

A. I took some, he prescribed some for me, but my husband never took any.

Q. Was he treating you for a heart condition?

A. He told me he was treating me for spasmodic gall bladder, which I was doubtful at the time, and after Ralph passed away I discovered nitroglycerin somehow was for heart condition, so I came down to McKinlay for a cardiogram on myself. I said to him, I said, "Dr. Lowell——"

Q. Well, we can't—— A. All right.

Q. But your testimony, then, is that he did not give your [159] husband nitroglycerin?

A. I think he prescribed him nitroglycerin. That is what made me think when he gave me nitroglycerin for gall bladder, he told me he was giving me nitroglycerin for spasmodic gall bladder, I hadn't been suffering a thing. But Ralph had never taken any, he never took any. On the way down, he took one. Didn't do him a bit of good, he took one.

(Testimony of Nova Garrett Walsh.)

I insisted he take one of them six miles out. He prescribed——

The Court: Do you mean that was one of his or one of yours?

A. One of his. He prescribed him some pills, we didn't know what.

Q. (By Mr. Raftis): When was that that he prescribed them?

A. Oh, it must have been his last visit in there.

Q. Would that be September 24th, you mean?

A. Must have been, I don't remember for sure. All I know is in the statement he claimed that he had taken them and it seemed to helped him. He never had taken them, I am the one who took the nitroglycerin. I didn't know what I was taking until later.

Q. I see. A. I found out about it.

Q. I wanted to ask you another question about what other [160] medicines were prescribed for the stomach condition that your husband was complaining of?

A. Amfegel and milk and soft diet.

The Court: Did this same doctor prescribe that for him? Lowell? A. Yes.

Q. (By Mr. Raftis): And there was something about appendicitis and hernia?

A. I believe in that statement he said he took his appendix out when they took his hernia.

Q. Is that correct?

A. At the time he operated on him, he was supposed to have had one hernia. Lowell examined him,

(Testimony of Nova Garrett Walsh.)

he said, "Ralph, upon examination of you, we find you had two hernias, one on each side, on the groin." And he supposedly took them both out and he did. It was hernia because there was hundreds of stitches on each side. You don't have that with appendix operation. Then, later, he took his appendix. I think he stated in there he took them at the same time. He didn't, he underwent two operations, the appendix came later.

The Court: I think he stated in the deposition that he did the hernia on one side and some other doctor did it on the other.

A. That is what he said. [161]

The Court: Am I right about that?

Mr. Raftis: I was trying to get that. These things are kind of hard to locate.

The Court: And that he did the appendectomy at the same time.

A. He stated that, but that is wrong.

Mr. Hamblen: He said he wasn't sure about the appendectomy, though.

The Court: Yes, that's right. He did, yes, that's right. He said he wasn't sure about that.

Mr. Raftis: I have it here.

The Court: Could have been at a different time.

Mr. Raftis: His answer was:

"I believe we took out the appendix when I fixed his hernia. We thought we probably wouldn't find much in the way of appendix, and I think we took out the appendix as an adjunct to the hernia."

I don't know whether I have covered everything,

(Testimony of Nova Garrett Walsh.)

Mrs. Walsh. I didn't have an opportunity to consult with the witness on account of Dr. McKinlay, your Honor. Perhaps maybe I could if the Court will pardon me just a minute.

The Court: Yes, all right.

(Mr. Raftis conferred with the witness.)

Q. (By Mr. Raftis): One question, Mrs. Walsh, in regard to instructions of Dr. Lowell about doing heavy lifting. I don't believe we have gone into it. When did he first give these instructions to your husband, to your knowledge?

A. He first gave them in '48, I believe, after he repaired him for double hernia. He told him he would never be as strong and would never be able to do the lifting that he had in the past.

Q. And did you at any time between September 5, 1953, up to the time your husband died go into Dr. Lowell to complain that your husband was not following his directions?

A. I don't believe I ever did. I'm sure that is a mistake. I believe perhaps I complained he didn't follow his directions quite on this allergy, but he was seeding his wheat and he was to keep out of the dust, and it was almost impossible for him to completely stay out of the dust for allergy. I believe on the records he had one of the worst cases of allergy in their history.

Q. I believe you have stated that the appendix was removed at an entirely separate occasion from the removal of the hernia?

A. That's right. [163]

(Testimony of Nova Garrett Walsh.)

Q. And to your knowledge, was it necessary that the appendix be removed at that time?

A. When Dr. Lowell took them out, he said to Ralph and myself, he said, "Well, I'm sure glad we took these out." He said, "When we got in there, we found they were absolutely plumb full of green feces." That was his words.

Q. I believe that is all you had in mind, is it?

A. Yes.

The Court: Just a moment.

Mr. Hamblen: Just a question or two.

Cross Examination

Q. (By Mr. Hamblen): Mrs. Walsh, it is a little hard to remember exactly when you were in Dr. Lowell's office in '53, isn't it?

A. Doctoring with Dr. Lowell myself, I entered his office many times for myself. He was my family doctor.

Q. Well—— A. My son's.

Q. Well, do you say that you weren't in his office in September of '53 except the one time that you went in with Mr. Garrett on September 5th?

A. I was in with him on September 5th, I was in there again the 25th—not the 25th, perhaps the 26th, after [164] Ralph died. I was not there the 24th, as I have stated many times.

Q. The only time you were in there was the 5th of September?

A. Or there the very first part.

Q. With Mr. Garrett?

(Testimony of Nova Garrett Walsh.)

A. The day they run the cardiogram, if that means anything.

Q. And you didn't go any other time to ask for Dr. Lowell's help? A. I did not.

Q. On the ground that Mr. Garrett wasn't following instructions? A. I did not.

Q. Now, do you remember at the time of your deposition testifying that you didn't go in with your husband on September 5th when these cardiograms were taken?

A. I told you I went in on the 5th.

Q. Well, I will refresh your recollection.

Mr. Hamblen: May I have the deposition of Mrs. Walsh?

On Page 11, Mr. Raftis.

Q. Do you recall this question and your answer? I will lead up to it so you will get the whole context, Mrs. Walsh. [165] A. Go ahead.

Q. (Reading):

"Q. Well, he thought he had heart trouble before, didn't he?"

Your answer:

"A. Well, he thought he may have stomach trouble. I'm sure he never guessed he had heart trouble.

Q. As a matter of fact, he went to the doctor on September 5th, Dr. Lowell, didn't he?

A. He did, I believe.

Q. Dr. Lowell had told him he had a heart involvement at that time?

(Testimony of Nova Garrett Walsh.)

A. I wasn't with him. I don't know what he told him."

A. There must be some mistake. We asked for several corrections, that may be one I asked to be corrected.

Q. You don't remember whether you said that at that time or not?

A. I shouldn't have, if I did.

Q. At least now, you say you were with him on the 5th?

A. I was with him on the 5th. If that is the day he had the cardiogram, that is the last day I went in with him, when he had the cardiogram. I didn't exactly keep [166] track of dates, as I stated. I can't even tell you what day that was.

Q. All right. Well, I have asked you one set of questions about this visit of the 5th. You say you didn't testify that you were not with him, is that right, at the time this deposition was taken?

A. I state again that I was with him on the date they ran the cardiogram, but as far as the September 5th, September 10th, if they run the cardiogram September 10th, that is the day; if not, I wasn't there.

Q. All right, do you remember these questions and your answers:

"Q. Yes, I know, but that is all prior to this incident of September 24th. I am talking about the September 5th visit which he made to Dr. Lowell."

(Testimony of Nova Garrett Walsh.)

Your answer:

“A. I don’t remember whether it was September 5th or when it was, but he did make a visit.

Q. I am not trying to trick you on the date, but right about in there.

A. Sometime in there in September, Dr. Lowell—I always went with him before, but this time I didn’t go. I can’t tell [167] what he did tell him this day, because I don’t know.”

Do you remember making that answer?

A. I know this much, I didn’t go with him September 24th.

Q. Well, but this question was about the first visit in September, around September 5th. Do you remember testifying definitely that you didn’t go with him?

A. No, I wouldn’t have did it had I understood your question thoroughly.

Q. Twice then you testified on deposition that you didn’t go with him, and you say that was incorrect now?

A. I am not saying what day I went with him; I went with him the day he had the cardiogram. I am not sure if it was September 5th or when it was. If you have the date of the cardiogram, that is the date I went with him.

Mr. Hamblen: That is all.

Redirect Examination

Q. (By Mr. Raftis): Just a couple of questions, Mrs. Walsh. I think the evidence, Dr. Low-

(Testimony of Nova Garrett Walsh.)

ell's statement, was your husband came in about the 31st of August, 1953, and then came back again on the 5th of September. Now, is it possible for you to recall, or did you recall at the time Mr. Hamblen [168] asked you those questions in the deposition, just what date were involved?

A. It could—may I have the question again, please?

(The question was read.)

A. If my husband went in August 31st, it was probably because of the allergy he had. Every time he got around the wheat, this allergy came out. They called it wheat allergy, that he was allergic to wheat. And if it was September 5th the cardiogram was run, I was with him.

Mr. Raftis: I believe that is all.

The Court: Is that all?

Mr. Hamblen: That is all.

The Court: That is all.

(Witness excused.)

Mr. Raftis: Nothing further, that will be all, then.

(Plaintiff rests.)

The Court: Are you ready to argue this case, then, gentlemen?

Mr. Raftis: Well, unless your Honor wants to hear argument, I have some cases here, I would prefer if I could submit a brief and let your Honor take it under advisement after we submit some briefs, if that would be agreeable to counsel. [169]

Mr. Hamblen: Well, anything is agreeable with me, whatever the Court wants.

Mr. Raftis: That would be a little easier for the Court. I don't like to pick up a bunch of books and start reading a lot of language that——

The Court: I think there is a question of law here that will depend upon the present position of the Supreme Court of this state. Of course, this is a diversity action and the substantive law that applies is the law of the State of Washington, and I assume that the Supreme Court has taken a definite enough position so it won't be necessary for us to go outside of the state here. It is primarily a question of deciding——

Mr. Raftis: I believe that's right, at least as I view it.

The Court: ——of deciding the effect of these cases. And I think that I was at least temporarily on the majority when we held in one case that pushing an automobile that brought on a heart attack was an accident. That was the Tacoma case. But the Court receded from that position later on, and I might say that the thing that I am interested in primarily in here, I think that if you had nothing except the dragging of these wheat sacks, you would come within that recent case that Mr. Hamblen cited here, *Evans against Metropolitan Life Insurance Company*, 26 Washington (2d), [170] 594, and then the later case in 38 Washington (2d), *Johnson against Business Men's Assurance Company*. You have here the added circumstance that the wheat sack started to fall over and

the deceased reached out and grabbed it and held it back, whether that is an accident or not.

I might say that while I am not inclined to preclude counsel from arguing the facts, if they care to do so, it appears to me that the basic essential facts here as to how this accident happened are disclosed, so far as the Court is concerned, in the testimony of the son here, Ralph Garrett. I think that the boy was a dependable witness and, considering his age, a very careful, conservative witness. He wasn't inclined to be hauled and pulled around either way here, and I think he was telling the truth as best he could and as he remembers. So that basically, although I am not trying to preclude counsel from arguing the facts in their briefs, I would be inclined to adopt his testimony as to how the accident happened. The facts as to just what Dr. Lowell found and to what extent he warned the deceased about his condition aren't quite so clear cut, but I think what you had in mind was a brief, primarily.

Mr. Raftis: On the question of law, principally.

The Court: Yes.

Mr. Raftis: The Evans case that your Honor mentioned, that lays down the rule of where there is a [171] voluntary or willful or deliberate act, like pushing a car up a driveway, there was nothing about that which was accidental, but I think that same case recites, and that is the distinction, that had he slipped or stumbled, some unforeseen or unusual circumstance, then it would come within the rule. And I have a number of cases which set

that distinction forth and I would like to brief them for your Honor and give counsel a copy and send them in.

The Court: Well, I think you have a pretty fine line here between whether it was merely a voluntary action produced by the sack falling over, or whether it was an unforeseen contingency that might bring it within the accident class.

Mr. Raftis: It is one of those close cases.

Mr. Hamblen: I am prepared either to argue that now or later, whichever you prefer.

Mr. Raftis: I will do it now.

Mr. Hamblen: I agree with your Honor that that is the main point of the case. It is funny how we get led down the side streets here, medical and otherwise, it is interesting, but I think the main issue is that one.

The Court: Yes, I think it was perfectly clear from this medical testimony that we have here a man, as the doctor described it, who was a heart cripple, and assuming that the exertion was sufficient, the extraordinary [172] exertion in his case, to bring on death, it wouldn't have been sufficient in the case of a person of good health.

But, of course, that principle has been announced in the workmen's compensation cases, which, as Mr. Hamblen has pointed out, follow a different rule, but, nevertheless, even in insurance cases, these insurance companies are not insuring only people in perfect health.

Mr. Raftis: That's right.

Mr. Hamblen: That's right.

The Court: We have to assume that some of them are not as strong as others and have these underlying conditions.

I notice that in the Evans case—I don't know whether that is significant or not—but in the Evans case there is very strong language in that policy which expressly exempted the company from liability in case of accidental death that was contributed to in any way by an underlying disease or physical condition, impaired physical condition.

Mr. Raftis: I believe there is something in the policy that covers that.

The Court: In that policy there was specific language.

Mr. Raftis: I believe that's right.

The Court: That provided that the company would not [173] be liable if the accidental death was caused, in whole or in part, or materially contributed to.

Mr. Raftis: That's right.

The Court: Any pre-existing disease or underlying condition of physical deficiency or weakness.

Mr. Hamblen: There were three policies here, your Honor. One of them had that second clause you are just referring to, the other two didn't, and the Court considered both points in its distinction. Of course, it had a clause on the first two policies which was just like ours here; they had to find that there was no accidental means in order to avoid liability.

The Court: That language wasn't in the other policy?

Mr. Hamblen: That language wasn't in the other policy, nor was it in the Johnson policy in the Johnson case.

The Court: Well, I haven't re-examined the Evans case recently and that is probably true.

Mr. Hamblen: That is my recollection.

Mr. Raftis: Well, if it is agreeable to counsel, your Honor, I will get a brief down very shortly, and I can give you these citations that I have if your Honor would like to have them.

The Court: I think that it is a reasonable request to submit a written brief in a case of this kind, and if we [174] are to do that, I doubt if it would help much to have oral argument because I think you can cover the point here in a brief that doesn't need to be too elaborate.

Mr. Hamblen: I may wish to comment further on his authorities, your Honor. Although I have submitted a memorandum, I may want to add to it when I get his brief.

Mr. Raftis: That is quite agreeable with me, if it is with the Court.

The Court: Yes, I would assume so. I will keep this brief that you have submitted and then you may supplement it in answer to Mr. Raftis' brief, and a couple of weeks on a side be sufficient?

Mr. Raftis: I would think so, your Honor. I have to go to Olympia for the first of the week, but I will be back by the middle of the week. Then if I could have until about the 10th or 12th of November, along in there somewhere.

The Court: Let's see. Well, that is all right.

You have until the 10th and then Mr. Hamblen will have until the 24th.

Mr. Raftis: That will be satisfactory.

The Court: If you need a few days additional time, within reason, why, write me and I would be inclined to grant it.

Mr. Raftis: Thank you, your Honor. [175]

The Court: Court will adjourn, then, until October 26th at 10 a.m.

[Endorsed]: Filed April 26, 1955.

[Endorsed]: No. 14747. United States Court of Appeals for the Ninth Circuit. Commercial Travelers Insurance Company, a corporation, Appellant, vs. Nova Garrett Walsh, individually and as Administratrix of the Estate of Ralph H. Garrett, deceased, Appellee. Transcript of Record. Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

Filed: April 28, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14747

COMMERCIAL TRAVELERS INSURANCE
COMPANY, a corporation, Appellant,

vs.

NOVA GARETT WALSH, individually and as ad-
ministratrix of the Estate of Ralph H. Garrett,
deceased, Appellee.

APPELLANT'S STATEMENT OF POINTS

Comes now the appellant and does hereby state that it intends to rely upon the following points on appeal:

1. The trial court erred in its conclusion of law No. 1 that the facts showed "an unusual, unexpected and unforeseen event" which "constituted an accident."

2. The trial court erred in its conclusion of law No. 2 that:

"The acute or sudden coronary attack suffered and sustained by the said Ralph H. Garrett—amounted to an accident as contemplated and defined by the express terms of the policy of insurance—and that the death of said Ralph H. Garrett resulted directly and exclusively of all other causes from bodily injury sustained solely through external, violent and accidental means. * * *"

3. The trial court erred in its conclusion of law No. 3 that plaintiff is entitled to judgment for \$3750 and interest under the terms of said accident insurance policy.

4. The trial court erred in entering judgment for the plaintiff.

Dated at Spokane, Washington, this 30 day of April, 1955.

HAMBLEN, GILBERT & BROOKE
/s/ H. M. HAMBLEN,
Attorneys for Appellant

Acknowledgment of Service attached.

[Endorsed]: Filed May 7, 1955. Paul P. O'Brien,
Clerk.

